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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 1999/36

Addendum

Visit to the Sudan

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Introduction

1. This report has been prepared pursuant to resolution 1999/36 of the Commission on Human Rights. It presents and analyses information received by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, during his visit to the Sudan from 20 to 26 September 1999, as well as information received from individuals and non-governmental organizations concerning allegations of violations of the right to freedom of opinion and expression.

2. The Special Rapporteur visited the Sudan in the context of his mandate and in accordance with General Assembly resolution 50/197 of 22 December 1995 and Commission on Human Rights resolution 1996/73, encouraging him and the Special Rapporteur on religious intolerance to consult with the Special Rapporteur on the situation of human rights in the Sudan with a view to undertaking a visit to the Sudan. The Government extended an invitation on 5 March 1996 to both Special Rapporteurs. The Special Rapporteur on religious intolerance visited the Sudan from 19 to 24 September 1996 and submitted a report (A/51/542/Add.2) to the General Assembly at its fifty-first session in November 1996. The visit of the Special Rapporteur on freedom of opinion and expression initially scheduled in 1998 had to be postponed owing to previous commitments. Following a meeting between the Special Rapporteur and the Ambassador of the Sudan on 30 April 1999 during the fifty-fifth session of the Commission on Human Rights, it was agreed that the visit would take place from 20 to 26 September 1999.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him in discharging his mandate by the Government of the Sudan. He would like to convey his gratitude, especially, to the Rapporteur of the Advisory Council for Human Rights and its staff, who helped make this visit successful.

4. The Special Rapporteur would also like to express his appreciation to the United Nations Resident Coordinator and the staff for their efficient organization of his visit.

5. Because of time constraints, the visit was confined to Khartoum where, in any case, all the media are concentrated. Consequently, the Special Rapporteur was prevented from addressing the difficult situation in southern Sudan, but will report about his findings in the northern part of the country.

6. During his visit, the Special Rapporteur met with the President of the National Assembly, Mr. Hasan Turabi, representatives of the Government, some members of parliament and the judiciary, as well as with representatives of non-governmental organizations active in the field of human rights, academics, media professionals, witnesses and victims of alleged violations of the right to freedom of opinion and expression, and other members of civil society who were of interest to his mandate.

7. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to the Sudan.

I. GENERAL BACKGROUND AND LEGAL FRAMEWORK

A. General background

8. The Sudan gained independence in 1956 and since then, the country has experienced only 11 years of peace. Since 1983 the Government of the Sudan has been engaged in a civil conflict whose adverse impact on the situation of human rights has been borne by the civilian population caught in the crossfire. In a climate of serious human rights violations and war-related abuses, the conflict originating in the southern part of the Sudan has resulted in a large number of deaths and many internally displaced persons and refugees, as well as inducing famine, isolation and crusading intervention.

9. In the past few years the Sudan has been going through significant changes. Steps have been taken towards a peaceful resolution of the conflict. The 1994 Declaration of Principles (DOP) agreed by the Government of the Sudan, the Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Army (SPLA) has offered the basis for a peaceful solution, under the aegis of the Inter-Governmental Authority on Development (IGAD) composed of Eritrea, Ethiopia, Kenya and Uganda. The Government has also initiated a strategy of "peace from within" with the signing of a peace agreement in Khartoum, on 21 April 1997, between the Government and six splinter groups, which, however, do not include the Sudan People's Liberation Movement/Army (SPLM/A). In addition to the reactivation of the Technical Committee for Humanitarian Affairs (TCHA) and declarations of ceasefire, a 21-point agreement on a comprehensive peace settlement was adopted during the Summit meeting of IGAD in November 1999. The agreement provides for the endorsement by the Government of generous political arrangements in the south after a transitional period. In addition, Egypt and Libya launched a more comprehensive peace initiative early in 1999 which takes into account the northern opposition as well, but denies self-determination to the south.

10. Almost a decade after the military coup that brought Omar Hassan Ahmad al-Bashir to power in 1989, a new Constitution was adopted in April 1998. The new Constitution significantly contains a bill of rights. Moreover, national elections are scheduled to take place in the spring of 2000. But the opening up of the political system has been accompanied by some not very encouraging signs. On 13 December 1999, a state of emergency was declared for a period of three months. In 1999, the Sudan exported its first shipment of crude oil from the Nuer oilfields in Bentiu, which has contributed to overcoming its previous isolation from the international community. However, this source of income runs the risk of being sabotaged by the continuation of hostility between the Government and the rebel groups. The Sudan, therefore, continues to welcome international humanitarian aid, although the United Nations cross-border relief programme, Operation Life-line Sudan (OLS), has been crippled by this warfare. The perennial tension between morality and pragmatism remains a moral and intellectual dilemma. The Special Rapporteur believes that the Government of the Sudan could reconcile means with ends, least the means corrupt the ends.

11. An important element in this political process has been the easing up on the press and the media since 1997. In particular, the new Constitution seems to encourage freedom of expression and opinion, although "as regulated by law". There are a wide variety of Arabic and English publications as well as nine daily newspapers, while Sudan television offers domestic and

satellite services with a pay cable network of six channels. Nevertheless, the Government's hold on the media remains tight and a number of restrictions on freedom of opinion and expression are still in place.

B. Legal framework

12. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in the Sudan.

1. International obligations

13. The Sudan is a member of the United Nations and is thus bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, article 19 of which enshrines the right to freedom of opinion and expression.

14. The Sudan has accepted a wide range of international obligations in the field of human rights. It is a party to the following instruments: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Slavery Convention, as amended, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention relating to the Status of Refugees and the Protocol thereto. Furthermore, the Sudan is a party to the African Charter on Human and Peoples' Rights.

15. Although the Sudan has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this has not yet been followed by ratification. Moreover, the Sudan has not acceded to the Convention on the Elimination of All Forms of Discrimination against Women and the two optional protocols to the International Covenant on Civil and Political Rights.

2. National legislation

16. In the past year, a new Constitution and new laws were drafted and passed by the Sudanese National Assembly, providing the legal framework for the creation of a democratic system.

(a) The Constitution

17. The National Assembly adopted a new Constitution on 29 March 1998, which entered into force on 1 July 1998 following a national referendum.

18. Article 55 of the Constitution states that the source of legislation is "Islamic Law and the Consensus of the nation, by referendum, Constitution and custom". Moreover, in Part I (4) it is also stated that "Supremacy in the State is to God the creator of human beings, and sovereignty is to the viceregent people of the Sudan who practise it as worship of God".

19. A Bill of Rights provides for most of the rights set forth in the International Covenant on Civil and Political Rights and is contained in Part II "Freedoms, Sanctities, Rights and Duties", which includes articles 20 to 34 of the Constitution. Article 25 deals with freedom of thought and expression, and reads as follows: "There shall be guaranteed for citizens the freedom of pursuing any science or adopting any doctrine of opinion or thought without coercion by authority, and there shall be guaranteed the freedom of expression, reception of information, publication and the press without prejudice to security, order, safety and public morals, as regulated by law".

20. Significantly, the enactment of the Constitution has made necessary a review of all existing legislation to bring it into line with the spirit of the new Constitution.

21. The recent declaration of a state of emergency contributed to the suspension of certain articles of the Constitution, in particular articles 56, 57, 59 and 60 (2) and (3). Article 25 (Freedom of thought and expression) and article 26 (Freedom of association and organization) are not concerned.

(b) The law on the press and other mass media

22. The Press Act 1999 replaces the previous Press and Printed Matters Act of 1993. This new legislation provides additional rights for newspapers. In particular, they can now be issued by any legally registered political organization. The protection of journalists' sources is also guaranteed.

23. Chapter II of the Press Act 1999 also establishes the jurisdiction and powers of the National Press Council, which is responsible for the granting of licences to domestic and foreign press institutions, the registering of journalists, as well as adjudicating complaints, through warnings, sanctions and penalties. The Council is composed of 21 members: 7 are appointed directly by the President, 5 are chosen among the National Assembly, while the remaining members are elected among representatives of the press. The Council's financial resources come directly from the State. With regard to sanctions and penalties, the Council can enforce the suspension of a journalist for two weeks and of a newspaper for up to two months. The most serious offences can lead to the revocation of the licence, as well as to the confiscation of the printing press. Moreover, if a newspaper has been suspended twice, the Council can remit the third contravention to a competent court with specific jurisdiction over the press. An appeal can be lodged to the court within 30 days of notification of the sanction.

24. Based on statistics provided by the Council, 195 cases of complaints were examined between April 1997 and September 1999. In a fifth of the cases, the Council opted for the suspension of newspapers for stated political (47 per cent) or social reasons (23.8 per cent). The Council dismissed the complaints in 52 of the cases.

25. The Code of Ethics, drafted by the Sudanese Union of Journalists, contains 10 clauses dealing with professional conduct and values. In particular, article 2 mentions that journalists must strive in favour of fundamental human rights and values as contained in local, regional and international legislation. Article 3 reaffirms their intention to respect all religious values, while article 6 deals with "fighting all forms of corruption and conduct harmful to the interest of the

country". Finally, the Code of Ethics also takes into account professional performance, training and union. Its preamble significantly states that Sudanese journalists will respect the Code of Ethics in spite of enticements and intimidation to which they may be subjected.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

26. In 1983, the shariah became the core of the Sudan's civil and criminal systems. The relevance of faith is not confined to the area of individual morality, but it is also part of socio-economic and political relationships. The regular police force is supplemented by the "Morality and General Discipline" group, which deals with offences relating to public morality (improper dress, indecency, alcohol violations, prostitution, etc.).

27. The Criminal Code of 1991 declares to be an unlawful assembly a gathering of more than five persons without prior approval by the competent State authorities. The Criminal Code serves two principal ends: the security of the State and the sanctity of Islamic concepts of justice. Section 152 of the Penal Code purports to outlaw "indecent and immoral acts". The Code punishes with 40 lashes "whoever commits in a public place, an act or conducts himself in an indecent manner or a manner contrary to public morality or wears an indecent or immoral uniform which causes annoyance to public feelings". Similarly section 153 punishes by lashing "whoever manufactures, photographs, possesses or handles materials contrary to public morality". In addition, article 159 of the Criminal Code states:

> "One can be accused of defamation if he/she spreads by any available means information relating to events or to the behaviour of a specific person with the intention of harming the latter's reputation. One shall not be accused of defamation in the following instances: (1) if his act occurred during juridical procedure, (2) if he or someone else had a legitimate complaint or a legitimate interest to defend himself which could not have happened without publishing the relevant information, (3) if the libelled person was acting in his public capacity and the information published was needed to assess his competency and activities, (4) if the facts were mentioned in good will or the person had already a reputation for that concerning which he is bringing an accusation of libel, (5) if the releasing of information on the individual character related to the public interest."

The crime of defamation can be punished with imprisonment for up to six months and a fine, or both.

28. The Political Association Act 1998, permitting political organizational activities under the terms of Tawali law, came into force on 1 January 1999 to allow the registration of political parties. Section 3 of this law states that "Every association in political movement must adhere to the ideology of Al-Ingaz (Salvation)". Al-Ingaz is a term the regime uses for itself. Thus, the provision requires that all political organizations must agree to adhere to the ideology of the ruling party in order to be registered. Section 3 also provides "Every association should not *discriminate against members because of race, colour, heritage, sex, class or political residence*".

29. The 1994 National Security Act, which is part of the emergency legislation, grants security forces virtual immunity from prosecution and provides them with investigative powers

that include arbitrary arrest, incommunicado detention, long detention without judicial review and arbitrary search. This Act is included in a list of laws to be reviewed by the Constitutional Court and was revised by the National Assembly on 14 July 1999 to become the National Security Forces Act 1999.

3. The establishment of new institutions

30. Certain institutions have been created in the Sudan to implement protection and promotion of human rights.

31. The Constitutional Court has been established to protect the Bill of Rights enshrined in the Constitution. As specified in chapter IV of the Constitution, the Constitutional Court is responsible for determining the constitutionality of statutory provisions and for the preliminary examination of certain provisions of draft laws in order to prevent Parliament from adopting laws contrary to the Constitution. Its members are appointed by the President, with the consent of the National Assembly. This provision of chapter IV of the Constitution - particularly important in the case of violation of any of the rights recognized in the international human rights standards - establishes the possibility for any individual to lodge a complaint with the Constitutional Court - provided that all other remedies have been exhausted or no other remedy is available - alleging that his rights have been violated by the application of an unconstitutional provision of law in respect of his rights. One of the major current tasks of the Constitutional Court is the review of 15 laws of various types.

32. The Advisory Council for Human Rights, established by presidential decree dated 29 October 1994, is composed of 13 members and is mandated, inter alia, to advise the Government on human rights, to participate in local, regional and international conferences and to organize visits by individuals and competent organizations. The Advisory Council, headed by its Rapporteur, Dr. El-Mufti, has the role of focal point in the field of human rights and is the principal interlocutor of the United Nations for all questions relating to human rights. One of the most recent activities of the Council has been the establishment of human rights education committees in the 26 states of the Sudan, chaired by the Minister of Education. Among other things, the committees are mandated to train law enforcement officers on all human rights issues. The Council itself is chaired by the Minister of Justice, while its members include officials of various ministries, the bar association and the women's union. The Council has urged revision of procedures that restrict travel of women under 50 years of age outside the country and has also asked for the release of political prisoners.

33. The Human Rights and Public Duties Committee is a legislative organ delegated by the National Assembly to deal with human rights issues. It is particularly in charge of harmonizing Sudanese domestic legislation with international human rights standards.

34. The 1998 Constitution, in article 130 (1), provides for a public grievances and corrections board whose chairman and members are appointed directly by the President with the approval of the National Assembly. According to article 130 (2), the functions of the Committee are similar to those of an Ombudsman in that "it shall work at the federal level to clear away grievances, assure efficiency and purity in the practice of the State ... and to extend justice after the final decisions of the institutions of justice". The individual complaints which are addressed to this

Committee should be characterized by the fact that all legal remedies have been exhausted. Most of the complaints received deal with the right to property, and human rights is not within its competence. Cases relating to human rights are addressed directly to the Constitutional Court.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. The media

35. In order to assess the situation with regard to the right to freedom of opinion and expression in the Sudan, the Special Rapporteur met with a large number of media professionals, as well as with members of the Sudanese Journalists Association.

1. The print media

36. The Sudanese print media is dominated by six dailies: two officials, El Anbah and El Esbouh, and three privately owned newspapers, Al Rai Al Akhar, El Sahafa and Al-Sharii Al Seyasi. A governmental paper, Al-Sahafi Aldwli, was created recently and a private newspaper, El Haiam, which had been suspended since 1989, resumed publication on 10 February 2000. In addition there are about 15 national, private and governmental periodicals, of which the most popular are the sports magazines.

37. The Special Rapporteur noted that the press in the Sudan exercised more freedom than in previous years. This improvement has occurred particularly in the print media. Indeed, all the interlocutors the Special Rapporteur interviewed agreed that more and more unofficial opinions are appearing in the media and that some lively discussions of domestic and foreign policy were published, particularly in the press.

38. However, the Special Rapporteur was told that at the same time the Government of the Sudan still exercises a tight control of news reporting. Criticism of the Government or the Islamic doctrine on which its laws are based often leads to suspension or seizure of the newspaper. Indeed main opposition newspapers are based in Cairo or London and their circulation in the Sudan is strictly forbidden. In the light of the allegations received, the Special Rapporteur wishes to draw attention to certain points which, in his view, raise serious concerns about the exercise of the right to freedom of opinion and expression.

(a) Restrictions in the domain of information

39. Many subjects remain taboo for the media, such as religion or the conflict between government troops and rebels in the south of the country, as well as State corruption. These subjects are covered in a very vague and indirect form in article 25 of the Press Act 1999, which establishes a list of sensitive issues and sets forth sufficiently broad restrictions so as to justify all sorts of censure, whether it concerns questions of society or the war in the south of the country.

40. In spite of the larger freedom experienced by the press, some topics which have an indirect link with the conflict in the south, like the issue of slavery and the abduction of children, are subject to self-censorship. In this regard, concern was expressed over the reporting on the armed conflict in the South. The self-censorship of journalists indirectly imposed by the

authorities on these issues cannot be considered as facilitating comprehension of the conflict in the region. The fact that there are almost no media in the south, except television and radio in Juba, and the alleged lack of access of journalists to the war zones are a matter of serious concern.

(b) The Press Act 1999 and the suspension of newspapers

41. As far as the legislation is concerned, the Special Rapporteur would like to raise some points concerning the new Press Act adopted on 10 May 1999. According to some journalists and academics, this law is not a real improvement. In comparison to the previous 1993 Act, the following difference has been brought to the Special Rapporteur's attention: the new law clearly states that the editor-in-chief shall be the first person responsible for "good" editing performance, subject to criminal law. With regard to the rights of journalists, the current law is somewhat less clear because it only states that journalists "shall not be subject to any unlawful act"; yet a journalist can still face arrest after notification to the General Union. Although the new Act contains some positive features, such as the protection of sources, the obligations of journalists are very broad. For instance, the Act leaves it open to interpretation as to what constitutes an "offence" in publishing information that may endanger national security, or may be in conflict with public morality, religion and science, as well as causing incitement and exaggeration in the public. Therefore, most Sudanese journalists still practise self-censorship. The vague criteria used for this new law seem to harm press freedom more than the former law of 1993.

42. The Special Rapporteur was informed by government representatives that there is no official secrets act to define which State information should be classified. Similarly, there is a notable absence of a freedom of information act to determine which information should be open to public scrutiny. In this regard, the Special Rapporteur wishes to emphasize that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information. He would strongly recommend that the Government of the Sudan follow the guidelines on freedom of information legislation established by the non-governmental organization Article 19 - The International Centre against Censorship, which are annexed to his latest annual report to the Commission on Human Rights (E/CN.4/2000/63).

43. As mentioned previously, the Press Act 1999 establishes the National Press Council (NPC) which is in charge of controlling the implementation of the Press law and also has the administrative power to suspend any newspaper, as well as to limit and control the creation of newspapers. In the light of the high number of newspapers suspended, the Special Rapporteur noticed views critical of the work of the NPC. Indeed, he was disturbed to learn that in the course of recent months, several newspapers, mainly independent ones, had been seized or suspended by the NPC. The Special Rapporteur was told that the NPC has no independence, given the fact that it is entirely under the Head of State. The NPC and the mechanisms of the Committee on Complaints are therefore criticized by a large number of Sudanese journalists. Indeed, suspension measures against newspapers could be meted out without any regard to judicial procedure.

44. Along the same lines, another controversy was brought to the attention of the Special Rapporteur regarding the legitimacy of the sanctions of the NPC. Article 32 of the Press Act provides for a specific court for press and publications cases, to which any person aggrieved by a

sanction of the NPC may appeal within 30 days. The general feeling expressed to the Special Rapporteur by the Sudanese press and the Human Rights and Public Duties Committee of the National Assembly was that the NPC should limit itself to granting licences to the press, but should not have competence to suspend newspapers. According to them, this matter should be taken up by the court at the earliest stage. On the other hand, some journalists and academics consider that if the Court was the only body competent to suspend newspapers, the lengthy process in court would be a negative point and the sanctions might be higher.

45. The Special Rapporteur considers this debate to be extremely important for the sustainable improvement of the situation of the press in the Sudan. He would be in favour of a self-regulating body, such as exists in other countries.[1] Here he wishes to recall that a free, independent and responsible press is a prerequisite for a democracy.

46. Particular concern was expressed over the large number of newspapers which were banned or suspended for days at a time. During 1999, at least three newspapers were suspended for publishing articles criticizing the Government on approximately 13 different occasions for periods ranging from one day up to a maximum of 34 days, causing considerable financial difficulties for these newspapers.

47. The indefinite suspension of the Al-Rai Al-Akhar newspaper on 16 September 1999 was brought to the Special Rapporteur's attention. Founded in 1995, this newspaper is known for its sharp criticism of the Government; it has requested many times that the articles of the Act which "shackle the liberty of publication and expression" be repealed. According to information received, the suspension was the result of a presidential decision bypassing NPC jurisdiction. Allegedly Ms. Amal Abbas, the chief editor of the newspaper, was summoned by the security services and interrogated on alleged complaints from "holy warriors" concerning articles sceptical of forced conscription into the army. The newspaper has already been suspended six times for articles critical of the political and economic situation in the Sudan. Indeed, the NPC suspended Al-Rai Al-Akhar for two days on 11 January 1999, for another two days on 22 June, for five days on 5 July, for two days on 26 July, for a week on 18 August and one week on 1 September 1999. On 31 August 1999, the Ahila Press and Publication Company, publisher of Al-Rai Al-Akhar, submitted a petition to the Sudanese Constitutional Court against the repeated suspensions by the NPC. The Council has often accused the newspaper of violating "journalistic ethics" for publishing articles on a wide range of issues, such as education standards, government policies and the drug trade in the Sudan.

48. The Special Rapporteur has learned with satisfaction that, on 17 December 1999, the President decreed that Al-Rai Al-Akhar should be allowed to reappear without conditions. It resumed publication on 3 January 2000.

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[1] See the report of the Special Rapporteur on his mission to the United Kingdom of Great Britain and Northern Ireland (E/CN.4/2000/63/Add.3).

(c) Intimidation of journalists

49. At the present time there are no journalists in Sudanese prisons. Nevertheless, several cases of journalists who have been detained for a limited time are still being registered. These persons are generally detained in "ghost houses", secret places where security forces often resort to torture.

50. Even if journalists are rarely arrested, they are often summoned for the purpose of intimidation and thus remain victims of harassment by the authorities, who drive them to self-censorship.

51. The Special Rapporteur is disturbed to learn that from March to September 1999, a number of arrests and detentions of journalists took place.

52. On 22 June 1999, it was reported that the chief editors of three Sudanese daily newspapers faced charges punishable by imprisonment following the publication of speeches of opposition leaders, seen by the authorities as endangering national security. The editors in question were Amal Abbas, chief editor of Al-Rai Al Akhar, Mohamed Mohamed Ahmed Karrar, chief editor of Elsharee Elsyasi and Mohi Eddin Titawi of Al Usbu.

53. On 21 May 1999, the Special Rapporteur sent an urgent appeal, jointly with the Special Rapporteur on the situation of human rights in the Sudan and the Special Rapporteur on torture to the Government of the Sudan concerning the case of Mohammed Abdel Seed, Khartoum correspondent for the London-based Arabic-language daily Ash Sharq al-Awsat, who was arrested on 14 April 1999 by security officers at his home in Al Kalakla, a town in the district of Khartoum, and kept in solitary confinement until his release on 26 May 1999 without charge or trial. It is alleged that he was so badly tortured during his detention that he could not walk and was in urgent need of medical treatment. In this communication the Special Rapporteurs also referred to the cases of two other journalists, Mutasim Mahmoud and Maha Hassan Ali, who were arrested on 14 and 18 April 1999 and reportedly accused of spying for a foreign power. They were both released two days later.

54. The Government of the Sudan sent a reply to the three Special Rapporteurs on 17 June 2000 informing them that Mohammed Abdel Seed and Maha Hassan Ali had been arrested for preliminary investigation in connection with criminal charges under the law and not because of their profession. According to the Government, they were accused of disclosing classified information to certain foreign circles and their right to physical and mental integrity was fully ensured. Concerning Mutasim Mahmoud, the Government stated that he had never been arrested.

55. On 17 and 18 April 1999, the chief political editor of Al Ray Alaam newspaper and a journalist of the Sudan News Agency (SUNA) were held in incommunicado detention. A few days before, the pro-government newspapers had undertaken a wide campaign of hostility against journalists for being agents of a foreign country. Both journalists were subsequently released.

56. The Special Rapporteur was further informed that three journalists, Mohammed Abdel Seed, Khartoum correspondent for the London-based Arabic-language daily Ash Sharq al-Awsat, freelance reporter Mustapha Sirre and Nasser Salaheddine were arrested by the Sudanese police on 17 November 1999 during a telephone press conference with SPLA leader, John Garang. It was alleged that the police broke into the office of Ghazi Suleiman, who had arranged the meeting, and took 17 people, mostly lawyers, to interrogate them at the police station on charges of disturbing public order. They were released on bail after a few hours and were asked to report the next day for further interrogation.

(d) Other types of constraints applied to the media

57. In addition, the Special Rapporteur has learned that the Sudanese press, which employs most of the 650 professional journalists, is suffering from a serious lack of paper, which is especially affecting the independent press. Consequently the circulation of these newspapers, as well as the ones owned by the State, is very low. Furthermore, it seems that the State is a shareholder in private newspapers, a situation which clearly affects the financial independence of newspapers.

58. With regard to the foreign media, there are very few imported newspapers and these are carefully selected by the Press Council. Distribution of foreign publications is in effect controlled by article 29 of the Press Act 1999 which grants power to the Press Council to authorize, or not, the importation and distribution of foreign publications. They are usually distributed in hotels reserved for foreigners and to some officials. The distribution of Egyptian and Saudi newspapers, forbidden for several years, was re-established in June and July 1996.

(e) The broadcast media and the new technologies

59. In the Sudan there are two national public Hertzian television stations. They only cover the state of Khartoum. These two stations are under the direct control of the Ministry of Information and Culture, and primarily follow the governmental line. The eight states also have the use of a television station that broadcasts their programmes via local rerouting on the main public channel.

60. The Sudan has its own satellite station whose main goal is to project the most positive image of the country. Sudanese citizens are allowed to subscribe to this channel on payment of a monthly fee. The broadcast media in the Sudan also include three national public radio stations and 19 local public radio stations.

61. Several concerns have been expressed with regard to the coverage of television broadcasting. The Special Rapporteur's attention was drawn to the fact that the broadcast media remain in the hands of the Government, as does the press agency SUNA. Radio and television are required to reflect government and National Islamic Front policies. It was alleged that Sudan television has a permanent military censor to ensure that the news reflects official views. Certain television series were reportedly forbidden and certain programmes, like "Pops and Tops" of the MBC were closed down under the pretext that the hostess, a Lebanese girl, was not well dressed.

62. During his mission, the Special Rapporteur was told that the government-owned radio and television stations often forbid the broadcasting of Sudanese songs, and the performance of poets and artists, claiming that they are not in conformity with the cultural orientation of the regime. On the other hand, several attempts to address the concerns of the public are reflected in the broadcasting of talk shows on various issues, to which, according to official sources, members of the opposition are invited.

63. During a meeting with the Chairman of National Sudanese TV, the Special Rapporteur encouraged him to promote more programmes with a particular emphasis on human rights and even on controversies relating to the freedom of opinion and expression.

64. With regard to satellite dishes, there are restrictions in respect of ownership. It seems that the majority of Sudanese still cannot obtain them since the price is too high. It costs $750 to subscribe for one year and $3,000 for a satellite dish. Furthermore, since 1991, the Government has established a special committee within the Ministry of Culture and Information to issue, against payment of a fee, authorization to own a satellite dish. The committee can reject applications or refuse to renew an authorization. The Special Rapporteur considers that this committee restricts the right of the Sudanese to have access to information and that the free flow of information should not only be allowed but encouraged.

65. In spite of the restrictions on ownership of satellite dishes, citizens have access to foreign electronic media. The Government does not jam foreign radio signals. In addition to its own domestic and satellite television services, Sudan Television offers a pay cable network of six channels, which directly rebroadcasts uncensored Cable News Network (CNN), the London-based, Saudi-owned Middle East Broadcasting Corporation (MBC), Dubai-TV and Kuwait-TV.

66. It is the view of the Special Rapporteur that public radio and television should be independent of the control of the State, as well as of the National Assembly, the political parties and any other social groups. The legislation must exclude the possibility of State authorities or of any groups influencing the programmes in a way that would damage the balance, free expression and impartiality of information.

67. It is beyond doubt that the new technologies have made their entry into the Sudan. The Sudanese Telecommunications Company "Sudatel" was set up as a public shareholding company with the aim of expanding telecommunications services and modernizing equipment and the network. Sudatel began operating as a business in 1994 and it offers a wide range of services, including internet services, radio phones and e-mail.

68. The Special Rapporteur notes with appreciation that the use of the Internet is free from any restrictions. The situation in this regard is much better than in some neighbouring countries and the Special Rapporteur was impressed to learn that there are about 10 Internet cafés in Khartoum. There is growing public support for the provision of more facilities in this direction.

B Other concerns relevant to the promotion of and respect for the right to freedom of opinion and expression

1 Freedom of association and organization

69. This right is set forth in article 26 (2) of the Sudanese Constitution and in the Political Association Act, passed on 1 January 1999, which lifted the ban on political parties that had been in effect for the previous 10 years. This law, known as the Tawali law, led to the registration of political entities. 33 political parties, including splinter groups of parties in exile, registered under this law, but not the traditional opposition Umma Party, Democratic Unionist Party (DUP) or the Sudanese Communist Party. According to this law, the criteria for registration include adherence to democratic principles and the use of peaceful means within the framework of a healthy political debate. Moreover, parties have to clarify their position vis-à-vis the most important national issues, such as the peace talks, and have to adhere in a way to the National Islamic Front ideology. The opposition parties that were in existence prior to the 1989 ban, which followed the coup d'état, consider the Political Association Act to be restrictive and the term Tawali to be unclear. Indeed, in the drafting of the Constitution, this word replaced language that would clearly have permitted the formation of political parties. In addition, parties refusing to register object to the fact that one of the provisions of the Tawali law requires loyalty to the current Government's definition of an Islamic State. The Umma Party, for example, refused to register because it did not adhere to the Constitution. Indeed, several parties indicated to the Special Rapporteur that they contested the legitimacy of the Constitution, since the first draft, prepared by a national commission composed of respectable personalities, had been withdrawn and replaced by a draft transmitted by the President's office.

70. The Special Rapporteur welcomes the adoption of the Political Association Act and considers the process of the registration of political parties to be a positive step towards pluralism in the Sudan. However, he is convinced that the imposition of the condition on parties wishing to register that they adhere to the ideology of the ruling party, does not reflect the guarantees set forth in article 25 of the International Covenant on Civil and Political Rights, namely that "every citizen shall have the right and the opportunity" without discrimination, "to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage, held by secret ballot ...; and to have access, on general terms of equality to public service in his country". Moreover, the fact that the term Tawali is ambiguous and is at no point defined in either the Constitution or the Political Association Act leaves the way open to different constructions, incompatible with political freedom. Finally, the Special Rapporteur's attention was drawn to the fact that the registrar, who has discretion to deny registration of a particular political organization, is appointed by the President with the consent of the National Assembly. This guarantees that the registrar will be a member of the National Congress, the ruling party. Consequently, given the complexity of interpretations relating to this law, the Special Rapporteur is satisfied to have learnt that the Tawali law is currently under review and that all the political parties have been invited to participate.

71. The National Congress, the Islamist party formed by the National Islamic Front, remains the single party dominating the political scene. The leaders of several other parties are alleged to remain in exile and several parties continue to function in exile, objecting to the requirements of

the Registration Act. However, a very positive step forward was noted after the declaration of a state of emergency on 12 December 1999, with the offer by President al-Bashir to the northern opposition that it play a role after its integration into a broad national front. The Special Rapporteur expresses his satisfaction at this far-reaching proposal and the message of hope which it conveys.

72. Despite the timely concessions, especially after the adoption of the Political Association Act, the rights to freedom of assembly, association and expression are still in a precarious state which needs correction, although the development of these rights is, admittedly, a time-consuming process.

73. The Special Rapporteur was told that during a peaceful demonstration organized by DUP on 1 January 2000 to celebrate the Sudan's independence day, the police allegedly used tear gas and clubs to disperse people. Seven persons were reportedly wounded, among them, Mr. Khalid Elsayed, a lawyer, who was seriously injured.

74. On 22 January 1999, the Special Rapporteur sent an urgent appeal to the Government of the Sudan together with the Special Rapporteur on torture and the Working Group on Arbitrary Detention concerning the case of Mohamed Mahjoub Mohamed Ali, a leading member of the banned Sudan Communist Party. It had been reported that he was arrested on 28 December 1998, the day before an open memorandum was sent to President Omar Hassan al-Bashir requesting the restoration of democracy in the Sudan, respect for human rights and an end to the civil war. At the time of the appeal, Mr. Mohamed Mahjoub Mohamed Ali was at risk of torture or ill-treatment in incommunicado detention. The Government of the Sudan replied to this communication on 2 February 1999 and informed the joint authors of the urgent appeal that Mr. Mohamed Ali had been arrested on accusations of recruiting and inciting members of the popular defence forces to attack their colleagues while conducting military operations.

75. The Special Rapporteur also notes the prohibition or suspension of press conferences organized by the opposition political parties. On 2 February 1999, members of the Communist Party, Haq were alleged to have been arrested for holding a press conference. About 20 journalists and photographers present at the meeting were detained for a short period by the police.

76. Approximately 100 people were reported to have been briefly detained on 6 June 1999 while they were taking part in a press conference in Omdurman to announce the formation of a new political party, the Democratic Forces Front, aimed at inter alia, the restoration of democracy and, particularly, freedom of expression in the Sudan. The group was subsequently released, but 11 people were charged with holding an illegal gathering, disturbing public order, causing a nuisance and insulting Islam. They were released on bail after six hours.

77. The Special Rapporteur was also informed that, during the period from March to September 1999, there was a recurrence of detentions of a limited duration and of threats linked to the exercise of the right of free assembly and speech. Selected members of the opposition parties and human rights defenders were alleged to have been targeted by the Government although, compared to previous years, the number of arbitrary detentions has declined in favour

of more indirect and subtle forms of control. A system whereby persons have to report on a daily basis to a State security office and are kept waiting there the whole day before being released constitutes a new form of harassment and intimidation of people wishing to express a different opinion.

78. During the Special Rapporteur's visit, an oil-related sabotage incident took place on 20 September 1999 when a pipeline was blown up in the town of Atbara, north-east of Khartoum. The National Democratic Alliance (NDA), an umbrella opposition group, claimed the responsibility for bombing this new pipeline. The incident led to a wave of arrests of political opponents. Among others, Ahmed Ali Al-Sayed, an outspoken critic of the Government and a former executive member of the Democratic Unionist Party, was briefly detained on 26 September 1999 in connection with the attack on the pipeline. He was held for seven hours and released without charge.

79. It is relevant to mention that in the northern part of the Sudan no independent human rights NGOs exist, but independent attorneys play a similar role by representing those charged with crimes against the State.

80. Advocate Ghazi Suleiman, who has frequently represented such defendants, was arrested at least six times in 1999. He was detained in April 1999, together with other lawyers who were holding a political meeting at the bar association union. The court released the lawyers, except for Mr. Suleiman, who was sentenced to 15 days in jail and to a fine for disturbing public peace and order; Mr. Suleiman was later freed after an appeal.

81. Mustafa Abdel Gadir, another prominent member of the defence bar and a leading private prosecutor for the families and victims of ex-dictator Jafaar Nimeiri, was arrested on the eve of Nimeiri's return to the Sudan from exile in May 1999. According to the source, he and two editors of Al Ray Alaam newspaper were charged with false accusations and insulting a public servant, on account of Abdel Gadir's column, which was critical of the Criminal Act of 1991, the Security Act, and the Press and Publications Act. They were released the same evening.

82. A positive development has nevertheless been noted, with the release of 41 political prisoners in February 1999. Now, the Government of the Sudan considers that there are no longer political detainees in Sudanese jails. Other significant decisions were adopted with the issuing on 22 November 1999 of several decrees nullifying laws adopted against the opposition, in favour of the release of political detainees in the Sudan, the dropping of charges against others awaiting trial, the return of confiscated properties to opposition leaders, the unfreezing of their bank accounts and the lifting of travel bans. Consequently, during the period 22 November to 2 December 1999, 38 political prisoners were released.

83. One of the most significant gestures has been the release, announced on 22 November 1999, of 29 political prisoners, among whom are listed the 27 being tried in connection with the Khartoum bombing, including Frs. Hillary Boma and Lino Sebit.

84. Father Hillary Boma, Chancellor of the Archdiocese of the Roman Catholic Church in Khartoum and outspoken critic of government policies, another Catholic priest,

Father Lino Sebit, and 25 others, mostly southerners, were tried in a military court for conspiracy and sabotage. This followed the explosion of six bombs in Khartoum on 29 and 30 June 1999 - the day before and the day on which President al-Bashir signed the new Constitution. Only one of the accused had a link with the military and the charges were based on confessions by defendants, obtained allegedly through torture during which three members of the group reportedly died.

85. The trial was adjourned in January 1999 for appeal on the issue of whether the military court has jurisdiction over civilian defendants. In August 1999, the Sudanese Constitutional Court ordered a new trial for these detainees and voted unanimously to refer the suspects for trial by an ordinary military tribunal instead of the grand military field tribunal where they first appeared.

86. The Special Rapporteur welcomes the release of these prisoners and hopes that they will henceforth be able to fully enjoy the right to express their political opinions, however divergent they may be. He hopes there will be a positive response from different political parties to overcome anti-democratic forces.

2. Cultural expression in the Sudan

87. Concern was expressed over the constraints placed on cultural creativity in the Sudan. Indeed, access to cross-cultural information is difficult: there are few libraries and bookshops open in the Sudan and very few foreign newspapers cross the border, placing the Sudan in a situation of isolation which limits its intellectual flowering. Artistic creativity is also seldom encouraged. A number of the Sudanese writers, poets and intellectuals have left the country; the remaining poets and musicians have difficulties in publishing their work. Thus, great artistic endeavours remain untapped and unknown.

88. Today the Sudan appears to lack the motivation to undertake various activities - such as cultural symposiums, poetry readings and artisan evenings - which are one of the essential ways to develop a society.

89. At the same time, the Government states that institutions have been created in the Sudan to promote participation in cultural activities by all social groups and to further cultural creativity. Among others, they refer to the Sudanese Cultural Institute, the National Theatre Troup, the National Library and the National Film Centre. International music and song festivals are also organized.

90. Nevertheless, the Special Rapporteur met with some of the writers who had been detained for having written a book that caused displeasure to the Government. The Special Rapporteur was also told that some university professors suffered set backs for not belonging to the ruling party. Artists and poets are also reported to face difficulties in obtaining permission to travel abroad to attend international conferences.

91. It was also reported that on 1 February 1999, the Cultural Enlightenment Society invited all the political figures, trade unionists, scholars and persons interested in the issue of enlightenment in the Sudan to a press conference in Omdurman at which

Mr. Al Hag Warraq Sid Ahmed was supposed to speak. Although the society was legally registered, the security forces and public order police raided the place and dispersed the audience, some participants were arrested and taken to the Omdurman prison.

92. In addition, the Special Rapporteur was surprised to learn that photography is restricted by law. It cannot be done without a permit obtained through the Minister of Information and Culture. It was mentioned to the Special Rapporteur that people have been hauled up while taking photographs without a permit. Recourse to such an administrative measure, in the view of the Special Rapporteur, should be restrained.

93. The Special Rapporteur considers that it is in the interest of the Sudan to facilitate global access to knowledge and modern culture and to assist the dissemination of scientific and cultural knowledge. In this context, the Government of the Sudan should strengthen cultural, trade and artistic cooperation with all countries.

94. The Special Rapporteur is of the view that since there are not enough foreign books (in foreign languages) on the market, the Government should remedy this by creating a "translation bureau" specifically for screening world literature relating to science and technology, economics and sociology and reproduce it in the local language. The Special Rapporteur is convinced that the Sudanese, who are known for their interest in reading, could build a civilization of knowledge.

3. Particular issues

(a) Religious minorities

95. Representatives of the Government indicated to the Special Rapporteur that all religions are respected in the Sudan and that freedom of worship is ensured by the Constitution. However, in practice, Islam is treated by the Government as the State religion and it inspires the country's laws, institutions and policies. While non-Muslims may convert to Islam, the 1991 Criminal Act makes apostasy - which includes conversion to another religion - by Muslims punishable by death. It was mentioned to the Special Rapporteur that the accusation of "apostasy" has sometimes been used against those who oppose the policies of the regime in any way.

96. During his visit, the Special Rapporteur was informed that both non-Muslims and Muslims suffer from a certain amount of discrimination. Muslims predominate in the north, but are in a minority in the south, where most citizens practise traditional African religions or Christianity. There are from 1 to 2 million displaced southerners in the north who practice traditional African religions or Christianity. Also, approximately 500,000 Coptic Christians live in the north.

97. The Special Rapporteur noted with concern that the activities of Christians, in particular, continue to be restricted. Allegations of harassment and arrest for religious beliefs and activities were reported to him during his visit. In May 1998, the Catholic Archbishop Gabriel Zubeir was supposed to have been detained for hours, apparently to prevent his attendance at the IGAD talks. Fr. Hillary Boma and Fr. Lino Sebit were tried by a military court.

98. It was reported to the Special Rapporteur that on 6 February 1999, when a Christian student group at the University of Khartoum held their annual book show for the Bible, a group of Islamist Sudanese disrupted the exhibition. They allegedly destroyed it, and violent conflict between the organizers of the exhibition and the attackers ensued. The police did not intervene. In this incident, four Christians and three Muslims were reportedly injured, Christian materials were destroyed by burning and religious books were thrown into the Nile.

99. The Special Rapporteur's attention was also drawn to an allegation that the Khartoum state government has dismantled Christian structures and prevented the construction of Christian churches in the capital. In the past 10 years, it has allegedly removed between 30 and 50 Christian churches, centres and schools in the slums because they lacked construction permits. The Special Rapporteur was also told that the Government had not granted permits to Christian denominations to build any churches since 1967, while freely granting permits for the construction of mosques. On the other hand, the Government denies that it has destroyed places of worship, stating that if churches are built or located in "unauthorized" areas where their parishioners live, the churches will be removed along with all other structures.

100. At a meeting in the course of his mission, the Special Rapporteur was told that representatives of the Catholic Church have difficulty in gaining access to government officials; they need to request meetings with them several times before a meeting actually takes place.

101. With regard to the print media of the minorities, concern was expressed over the absence of any Christian newspapers, as well as television or radio programmes, except for half an hour during the Christmas holidays. Christians used to have their own newspaper, but it was banned in 1989. In this regard, the voice of Christians can hardly be heard publicly and if so, some sensitive issues are yet to be tackled. Reference was made to the demolishing of churches which is not reported in Sudanese newspapers, except in Al-Rai Al-Alkhar. In fact, this paper has been criticized for reporting on this issue, claiming that it had attacked Islam by publishing this sort of article.

102. The Special Rapporteur was also informed that religious persecution is also directed against Muslims who do not share the regime's form of Islamist ideology and in particular groups like the Ansar, the Muslim Brothers and the conservative Ansar al Sunna. All these groups have critical attitudes towards the Government, from outright opposition to selective independent-minded criticism. On 26 January 1999, several members of the Ansar sect were reportedly arrested by the police for illegal possession of arms. Security officers allegedly went to the Al Imam Abdelrahman Al mahdi Mosque in Omdurman and arrested the imam, Ali Shareeg El-Din, and at least 40 other men praying there, immediately after sunset prayers. It was further reported that other Ansar and Umma party leaders were arrested and the press conference they called after the arrests was surrounded by police preventing journalists from attending.

103. The Special Rapporteur raised the issue of religious minorities with representatives of the Government, who denied that minorities are suffering from discrimination in the Sudan. For instance, they informed the Special Rapporteur that a certain number of Christians work in high positions in the Government, such as the Vice-President, Riek Machar, and the State Minister for Foreign Affairs, Gabriel Rorag, as well as in the National Assembly, in the judiciary and in the

universities. In addition, the Chairman of Sudanese TV mentioned that special time is allocated to the Christians on Sunday at 10 a m. every week, as well as at Christmastime and since the majority of Christians are in the south, the local television station in Juba broadcasts specific programmes for them. The Special Rapporteur is convinced that the problems referred to above are soluble and this gives hope for more progress in the future.

(b) Women

104. The Constitution contains provisions for the equal rights of women, but the 1991 Criminal Code, in particular, seriously curtails their rights. Indeed, this code puts constraints on women with respect to their public behaviour and dress and provides for punishment by whipping. The Special Rapporteur has been informed that women are especially targeted as recipients of this type of punishment, which is administered shortly after sentencing.

105. The Public Order Act 1996 provides, inter alia, that women should be "dressed in a manner that takes into account Islamic values" and that on public transportation vehicles women should not take seats near the drivers; in public gatherings, including those organized in schools, farms, educational institutions and clubs, women should be separated from men by curtains. Governmental sources informed the Special Rapporteur that this legislation is in fact not implemented in a strict manner and that, compared to neighbouring countries, women are allowed more liberty. However, the Special Rapporteur considers that the fact that these provisions of the Act remain in place is not a positive point. On several occasions, the Public Order Police have rounded up female students wearing tight trousers or short skirts. Punishments provided by this Act, especially lashing of women, are carried out at the headquarters of the Khartoum Popular Police Forces (PPF).

106. The case of a group of 24 students of Ahlia University in Khartoum was mentioned to the Special Rapporteur. On 13 June 1999, after the adoption of a new dress code which requires women to wear clothing compatible with Islamic values, this group was reportedly arrested and convicted by the Public Order Court on charges of committing indecent or immoral acts and wearing clothes which upset public feelings. They were allegedly arrested at a picnic, held with the permission of the university and the local authorities. All the women in the group, aged 18 to 23, were sentenced to 40 lashes and fines of up to US$ 20 for having worn shirts, trousers and tee-shirts. During their detention some of them were reportedly subjected to sexual harassment.

107. In this regard, the Special Rapporteur wishes to express concern about the heavy hand with which the security forces appear to exercise authority in public life in the Sudan. In addition to the Nizham El Arm (moral police) which have terrorized the population, it was reported to the Special Rapporteur that the National Security Act provides a framework for impunity and falls far short of the standards provided for in the Bill of Rights enshrined in the 1998 Constitution. He welcomes the news that a revised National Security Act was passed by the National Assembly on 14 July 1999, whose main features are changes in the system of detention and the creation of a Minister of National Security Affairs.

108. The attention of the Special Rapporteur was also drawn to the fact that women are under represented in the Government and politics. In accordance with constitutional decrees, women have the right to vote in any public elections and are also qualified to compete for the

office of the President of the Republic and for membership in the Parliament. However, only 25 women are members of the National Assembly, which consists of 300 members in all. In addition, 89 per cent of economically active women still work in agriculture, while only 4 per cent work in the industrial sector.

109. Nevertheless, it should be appreciated that the Government is making efforts to increase the employment of women in government offices (10 per cent). The authorities have also taken steps to uphold the political importance of women. According to the Government, Sudanese women are moving into many areas from which they were by tradition excluded, and are now present in all walks of life - from politics and business to law, medicine, the military and the police. The Government has also established women's studies and research units at higher education institutions and women's development units in various government ministries, corporations and bodies. The Special Rapporteur learned that a woman ambassador was recently appointed and that out of 750 judges, 76 are women.

110. However, Sudanese women who openly oppose the Government run enormous risks. Living in a culture where women are less active in politics than men makes them all the more subjects of suspicion when they do enter the public arena. In fact, very few women occupy positions of authority within the outlawed political parties and women opponents of the Government must report day in and day out for weeks at a time to security offices. Sara Abdallah Abdelrahman Nugdallah, a university lecturer, was arrested and detained several times only for being a member of the executive of the women's committee of the opposition Umma Party.

111. As far as the media are concerned, it has been reported that discrimination against women journalists exists since they are rarely promoted. Amal Abbas, the only woman editor-in-chief, was recently barred from taking part in the NPC elections for not being a registered member of the Sudanese Journalist's Union, despite being a practising journalist.

112. Due to their "inferior state", women are also not free to express their views in the newspapers and radio. Certain issues like domestic violence or violence against women in general are never addressed, either by the Government or by the media.

113. Concern was expressed to the Special Rapporteur in reference to freedom of assembly of women, a right which is regularly violated. A group frequently targeted for harassment is the Martyrs' Families Organization, mostly composed of women relatives of 28 army officers summarily executed after a coup attempt during Ramadan in 1990. They come together on the yearly Ramadan anniversary of the killings to peacefully protest the murders and to demand redress. In January 1999, two members of the group were reportedly summoned to security offices prior to the anniversary and forced to sign a promise not to participate in any activities to commemorate the deaths. A third member, Khalda Elsayed, was detained and released on bail.

114. On 8 March 1999, the Alliance of Democratic Women organized a festival to commemorate International Women's Day in Abdel Karim Mirghani Centre in Omdurman. Security forces and police raided and closed the centre and arrested its Director. The people

present were beaten with sticks and batons in order to disperse them. In the meantime, other women's organizations which are ideologically closer to the regime were allowed to celebrate the event.

115. In a joint initiative with the Special Rapporteurs on the situation of human rights in the Sudan and on violence against women, the Special Rapporteur sent a communication to the Government of the Sudan on 5 December 1997 concerning an incident which occurred in front of the UNDP office in Khartoum. On 1 December 1997, a group of approximately 50 women arrived at the UNDP compound to transmit, through this office, a letter to the United Nations Secretary-General protesting against the compulsory military conscription of their sons and brothers to fight in the civil war in southern Sudan. It was alleged that the police dispersed the peaceful demonstration with force, aggressively beating and abusing the women, who were then arrested. One woman received 40 lashes and 36 received 10 lashes each following a summary trial at which they were convicted for public order offences. The Government of the Sudan replied to this letter on 9 January 1998 informing the Special Rapporteurs that the demonstration had been carried out in violation of the law, which requires a licence from the local authorities of Khartoum State.

116. Finally, the efforts of the Government should not be ignored. It has to be noted that the Human Rights Advisory Council, a government body, continued its active role in addressing human rights problems with the Government, in particular the restrictions on women travelling outside the country and the issue of the release of political prisoners. Thanks to its influence, in 1996 the Government lifted some restrictions on married women travelling abroad, but continues to require permission of a male relative for unmarried women travellers. In late 1998, the Government also decreed that female government employees would be permitted to drive government vehicles.

117. Furthermore, the Special Rapporteur's attention was drawn to the fact that the Government has banned female circumcision and permitted meetings on the topic. A conference was even held on the subject in April 1999. Furthermore, reference was made to the good work done by the government-sponsored Sudan National Committee on Traditional Practices, whose objective is to eradicate harmful practices endangering the health of women and children, in particular female genital mutilation, which is still performed on 82 per cent of women. The merit of this organization is to have publicized the danger of this type of practice, thereby leading to an open debate in the media.

(c) Students

118. Sudanese universities are at the heart of political activity. They are subjected to violent repression during demonstrations against the Government. They are also subject to attacks by the security forces and by militias of the Islamist groups which are protected by the Government.

119. The Special Rapporteur learned with concern that a large number of students have been arrested over the years. It is alleged that they were often abducted, blindfolded and tortured, and then released after a day or so. In the worst cases, death occurred in custody. Such was the case of Mohamed Abdesalam Babiker, a law student at the University of Khartoum and a member of the Democratic Front, who was reportedly arrested on 4 August 1998 by units of the Popular

Defence Forces and the Forces for the Defence of Belief and the State while taking part in a demonstration protesting an 80 per cent rise in university fees. He died while in the custody of the security forces on 4 August 1998. It was alleged that several other students were heavily tortured for belonging to opposition parties or associations, among them Khalid al Taher Mustapha, a 25-year-old student and a member of the New Forces Movement, was abducted in front of the University on 12 November 1998, driven to a hotel and tortured. Mohamed Ahmed el Nour, aged 29, and Muawia Bushra, 25, both students at the University of Juba and members of the Democratic Front allegedly met the same fate in December 1998.

120. Other more recent cases have been brought to the attention of the Special Rapporteur. They concern, first of all, Adam Issa Mohammed, an economics student, and Al-Waseela Ahmed Eizeldin Malaa, a law student, both studying at the Islamic University in Omdurman, who were allegedly abducted on 21 March 1999 and taken to a secret detention centre, known as a "ghost house", where they were severely tortured. They were found unconscious in a different district of the capital.

121. On 27 September 1999, 190 students in Omdurman were arrested for having demonstrated on the streets of Khartoum to protest against the arrest of 50 of their colleagues; they were charged with "inciting riots". The unrest spread to Atbara, where 12 students were allegedly injured in clashes with the riot police and an unknown number of students were arrested.

122. Finally, the Special Rapporteur wishes to raise an issue relating to students and the right to education that he considers to be of great importance. During his mission, he learned that most of the above-mentioned clashes between students and the Government seem to be linked to compulsory military service. Conscription was introduced by the National Service Law of 1992, in accordance with which all men between 18 and 33 years old are liable for military service lasting for 24 months (18 months for high school graduates and 12 months for university and college graduates). It was also reported that a government decree of June 1997 provides that all boys, typically of ages 17 to 19, (other sources mentioned youths aged 16 and upwards) are required to do between 12 and 18 months compulsory military service in order to receive a certificate on leaving secondary school. Students need such a certificate for entry into a university and the decree effectively broadened the conscription base. It has been alleged that the Government enforces this decree and then attempts to send a number of the youths concerned to combat zones for advanced military training, presumably for ultimate incorporation in the Sudanese People's Armed Forces.

123. In April 1998, 52 recruits (129 according to other sources) reportedly died when their boat capsized in the Blue Nile as they tried to flee a camp south-east of Khartoum. According to the information received, soldiers beat and shot recruits as they tried to escape. Furthermore, the regime had summarily closed the institutions of higher education for almost a year (October 1997 to September 1998) for security reasons, and in August 1998, decided to raise residence fees by 80 per cent at Khartoum University.

124. During his mission, it was frequently mentioned to the Special Rapporteur that, at the present time, 70 per cent of students are female, which the Government indicates as a rise in

power for women in the educational field. In fact, males have avoided registering for the school certificate in order to escape the inevitable link with compulsory instant combat.

125. The Special Rapporteur regrets that the education of the Sudanese people has been relegated to a secondary position, even though he understands the requirements of war. He nevertheless considers that imposing military service as a condition for continuing one's studies is fundamentally a violation of the right to education. Appropriate forms of civil service or conscientious objection to military service should be sought in order to respect both freedom of opinion and the right of students to choose.

III. CONCLUDING OBSERVATIONS

126. The Special Rapporteur would like to welcome the stated commitment by the Sudanese to bring peace to the country and to promote the transition to democracy. In particular, he recognizes that the Sudan has adopted better legislation and subscribed to most of the international human rights conventions, and has created, through such legislation, machinery designed to ensure their application in its territory. He hopes that the situation that led to the recent establishment of a state of emergency in the north is only temporary and that the authorities will rapidly understand the necessity of returning to a normal situation.

127. The Special Rapporteur considers that the Government of the Sudan has made significant advances with regard to political and civil rights in the past two years, the chief of which has been the adoption of the new Constitution. The Government has chosen the right path by reforming the legal and social system, taking international law into consideration. He considers the adoption of the Constitution and the registration of political parties to be important steps for guaranteeing human rights, in particular the right to freedom of opinion and expression. It is to be hoped that these improvements will mark the beginning of sustainable positive change.

128. The Special Rapporteur wishes to recall that freedom of opinion and expression constitutes the basis of all the freedoms on which democracy rests. No nation can make progress if freedom of expression is not guaranteed to all its citizens and protected by the law. The Sudan has made great progress recently and the Special Rapporteur notes with appreciation the attempts of the Government to be more open with regard to freedom of opinion and expression. These new developments are reflected in greater political expression and more political debate in the newspapers.

129. The Special Rapporteur was informed on several occasions of the Government's efforts to bring the law into line with international standards. However, the information he has received concerning the period following the adoption of the new Constitution, which was characterized by the violation of political freedoms and human rights abuses, fails to demonstrate a serious effort on the part of the Government to move in this direction. In addition, the Special Rapporteur noted that the majority of non-official persons he met during his mission do not have full confidence in the intentions of the Government and consider the fundamental freedoms to be precarious. Moreover, the situation and problems in the south remain unchanged. The current state of emergency is not very promising and can only undermine confidence in the Government's intention to introduce genuine reforms and positive developments, such as more

political debate and greater freedom of the press. The armed conflict originating in the southern part of the Sudan is an obstacle to the full exercise of the right to freedom of opinion and expression, but should not be an excuse for restricting this right.

130. With regard to the legislative framework guaranteeing the right to freedom of opinion and expression, the Special Rapporteur is concerned that while this right is now formally guaranteed in the Constitution, the Press Law and the Political Association Law, certain provisions of the latter are ambiguous and based on an unduly broad view of the legitimacy of restrictions, thus allowing impermissible infringements on the freedom of opinion and expression. The Special Rapporteur notes that the National Press Council has broad discretionary power, for instance to apply administrative suspension measures or to prohibit publication of newspapers in an abusive way, thereby muzzling ideas and the expression of opinions. The Special Rapporteur considers that the role of a press council, to the contrary, is to promote the profession of journalism and the efficiency of the press, and to guide the profession.

131. In addition, even if members of the press can work in an increasingly free atmosphere and can touch upon sensitive issues, the Special Rapporteur considers that there should be more tolerance for some points of view which Sudanese society refuses to accept today. If, on the one hand, sensibilities should be respected, on the other hand expression of opinion should be accepted as part of the democratization process.

132. The Special Rapporteur is concerned at the State's monopoly and control of the national radio and television broadcasting system, and of the major daily newspapers. In this connection, he deplores the obstacles encountered by the print media in trying to provide the Sudanese public with a different source of information. For this reason, he is concerned at Government measures intended to limit the Sudanese people's right to receive information and ideas of all kinds, regardless of their origin. He regrets, in particular, the obstacles which limit the use of satellite dishes, and those restricting the free circulation of information from abroad through the press or television.

133. In this context, the Special Rapporteur would like to refer to article 19 of the International Covenant on Civil and Political Rights, which states that everyone has the right not only to impart information of all kinds but also to receive information regardless of frontiers. The free circulation of information and exchange of ideas through the media and in other public forums is indispensable to the proper functioning of a democracy.

134. Furthermore, the Special Rapporteur is very disturbed by the number of cases of arbitrary detention, torture and harassment of persons who seek to express different opinions, particularly journalists, political opponents, students and human rights advocates. He particularly deplores the intimidation of journalists, which is having a chilling effect on freedom of the press.

135. The Special Rapporteur believes that a resolution of the current differences and an open dialogue with the opposition are essential steps for furthering the promotion and protection of human rights. He also wishes to emphasize the important role of freedom of opinion and expression in this process.

136. The Special Rapporteur regrets that religious minorities continue to be discriminated against in law and practice. He considers that more has to be done to integrate minorities into the media. He is convinced that additional efforts should be undertaken in order to integrate religious minorities into Sudanese society, by listening more closely to their problems. It is the view of the Special Rapporteur that, in a multicultural and multireligious society, more attention should be drawn to the weak than to the strong. In addition, he wishes to refer to the recommendation of the Special Rapporteur on religious intolerance, contained in his report to the General Assembly, that "special efforts should be made with respect to places of worship, which should be a forum for religious matters alone, not political ones and ... should be protected from political tensions and controversy". Thus, all prohibitions and limitations imposed on the place of worship of Muslims and non-Muslims should be abolished.

137. The Special Rapporteur welcomes certain progress in the status of women, especially their growing access to professional fields usually reserved to men. However, their condition remains very low owing to legislation and practices that discriminate against women.

138. The Special Rapporteur has noted the need for technical assistance in the field of human rights and the media and he welcomes the perspective of permanent representation of the Office of the High Commissioner for Human Rights in the Sudan to implement a technical cooperation project, which is currently being elaborated after a needs assessment mission in September 1999.

IV. RECOMMENDATIONS

139. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

140. The Special Rapporteur would like to encourage the Government in its determination to cooperate with the special procedures of the United Nations by recommending that it should consider in a positive light a visit by two other mechanisms of the Commission on Human Rights to the country, namely the Special Rapporteur on violence against women and the Working Group on Arbitrary Detention. The Government could thus take advantage of their expertise in these two fields which, in the Special Rapporteur's view, merit particular attention.

141. The Special Rapporteur recommends that the Government give serious consideration to the establishment of a separate and autonomous national human rights institution that would act independently of any other State authority or ministry functioning as part of the Government, in accordance with the Paris Principles relating to the status of national institutions.

142. The Special Rapporteur strongly encourages the Government of the Sudan to take all necessary steps to accede to the Convention on the Elimination of All Forms of Discrimination

against Women and to the two Optional Protocols to the International Covenant on Civil and Political Rights. The Government is also requested to ratify the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.

143. The Government is further urged to revise certain domestic laws which are currently too restrictive as to the exercise of the right to freedom of opinion and expression, in particular the Press Act 1999 and the Political Association Act 1998 (Tawali law):

(i) The Press Act 1999 should be revised in order to redefine with more clarity certain of its articles and to bring them into conformity with article 19 of the International Covenant on Civil and Political Rights. Particular attention should be given to the urgent revision of the National Press Council, which should first become a self-regulatory body, to confer upon it real independence and to permit all press interests to be represented. The competence of the NPC to suspend newspapers, which is currently used in an arbitrary way, should be withdrawn and become the prerogative of a special court which could be established to deal solely with press issues, in order to avoid lengthy procedural delays. It should be stressed that the role of a press council is to promote and defend the independent press;

(ii) The Political Association Act should be revised with a view to legalizing the traditional opposition parties, which are currently operating clandestinely, and facilitating the establishment of new parties, thereby encouraging the development of true political pluralism. The law should also promote the creation of an environment conducive to the development of society by facilitating the establishment of independent NGOs.

144. The Government is urged to ensure that future legislation and its implementation are in compliance with article 19 of the International Covenant on Civil and Political Rights and other relevant international standards. The Government is also encouraged to consider ways to ensure that the process of introducing future legislation that may affect freedom of expression and media freedom is transparent. The Government may also wish to consider ways of including media professionals in this process, to continue its cooperation with international organizations and to benefit from advisory services. In the case of the adoption of a future law on official secrets and freedom of information, the Government should keep in mind the principles and guidelines for the elaboration of freedom of information legislation which are contained in the annex to his annual report to the Commission on Human Rights (E/CN.4/2000/63).

145. The Special Rapporteur further urges the Government of the Sudan to ensure suppression of intimidation and harassment of persons seeking to exercise their right to freedom of opinion and expression, in particular journalists, political opponents, students and human rights advocates. Steps should be taken to investigate promptly any acts of violence brought to their notice, and those responsible should be brought to justice.

146. In accordance with the recommendation of the Human Rights Committee of November 1997, the Special Rapporteur urges the Government to remove all unnecessary restrictions on freedom of expression and assembly. The right to peaceful assembly should also be respected by law enforcement officers.

147. The Special Rapporteur strongly urges the Government to take all necessary steps to guarantee the independence of the media, such as by protecting them against any interference on the part of the party in power. The establishment of additional independent newspapers and private competitive television stations should be encouraged.

148. The Government should provide the media with free access to all areas of the country, in particular the Nuba Mountains and all locations in southern Sudan.

149. As regards the flow of information from other countries, the Special Rapporteur urges the Government to avoid restrictions on foreign newspapers and on the broadcasting of foreign programmes. In this regard, the committee in charge of giving authorizations for satellite dishes should be abolished.

150. All policies and practices that discriminate against women in Sudanese society should be eliminated. Certain provisions of the Criminal Code and the Public Order Act 1996 raise serious concern with regard to the rights of women. The Government is strongly urged to review these laws in this regard and to put an end to abuses committed by the security forces and militias like Nizar El Am, which particularly target women. The Special Rapporteur considers that this type of abuse gives a very bad public image of the Sudan.

151. The Special Rapporteur remains concerned about the persistent pattern of prejudice and discriminatory attitudes towards religious minorities. It is recommended that new measures be taken in order to give equal access to the media to all parts of Sudanese society, especially minorities and women.

152. As far as cultural expression is concerned, the Special Rapporteur would recommend that the Government encourage intellectual and artistic creativity by abolishing all direct and indirect interference which would have an inhibiting effect. Funds should be invested in new technologies and the diffusion of literary works to the Sudanese population. In this particular regard, the Special Rapporteur would recommend the creation of a "translation bureau" specifically for screening the world literature relating to science and technology, economics and sociology and reproducing it in the local language.

153. The Special Rapporteur encourages the Government to disseminate to the widest audience basic human rights instruments and information. He also recommends that it initiate and organize training in international human rights standards and practice for various groups of professionals, including government officials, members of Parliament and the judiciary, particularly with regard to the right to freedom of opinion and expression, and to ensure that international standards are applied in their respective areas of competence. Journalists themselves should be trained through the establishment of a Sudanese institute of journalism,

which would increase their professionalism and the quality of their work. The Government may wish to consider benefiting from international expertise in this area in designing and conducting training programmes and establishing this institute.

154. The Special Rapporteur considers the building of a human rights culture in the Sudan to be of extreme importance and, in this regard, he would recommend that a specific time be allocated, at least once a week, for human rights issues in radio and television programmes in order to disseminate information on various human rights issues. In this context, journalists should be trained in order to play their crucial role in the dissemination of human rights issues through the media.

155. Finally, the Special Rapporteur welcomes the cooperation the Government of the Sudan extended to OHCHR for establishing a technical cooperation project which would include a media component. The participation of other institutions, such as UNESCO, which have valuable expertise in the field of the media, could also be encouraged.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

Dr. Hassan El Turabi, Secretary General of the National Congress

Mr. Abdel Rahman Ebrahim, Under-Secretary General, Ministry of Justice

Mr. Gabriel Rorag, State Minister for Foreign Affairs

Mr. Abdul Dafie Al-Khateeb, Secretary General, External Information Council, Ministry of Culture and Information

Dr. El-Mufti, Rapporteur, Advisory Council for Human Rights

Mr. Hamid Sirag El Din, Chairman, Human Rights and Public Duties Committee, National Assembly

Mr. Abdel Aziz A. Shiddo, Deputy Speaker, National Assembly

Mr. A.S. Suleiman, Head of the Police Department

Mr. Abdelhamid Osman Asmali, member of the Committee on Grievances

Diplomatic community

Mr. Michel Raimbaud, Ambassador of France

Mr. Valery I. Kouzmin, Ambassador of the Russian Federation

Mr. Richard Makepeace, Chargé d'affaires, Embassy of the United Kingdom of Great Britain and Northern Ireland

Mr. Huitzinj, Chargé d'affaires, Royal Netherlands Embassy

Mr. Marteen Brouwer, Counsellor, Deputy Head of Mission, Royal Netherlands Embassy

Professionals in the information sectors

Dr. Ismael El Haj Musa, Chairman, National Press Council

Dr. Osman Abu Zaid, Secretary-General, National Press Council

Director of Sudan Television

Zubeir Osman, Director of Sudan Radio

Ms. Neimat Moh-Bilal, Director, Sudanese News Agency (SUNA)

Mr. Barri A-Mulah, Assistant Director of SUNA

Ms. Amal Abbas, Chief Editor, Al-Ra Al-Akhar

Mr. Mohammed Said Maroud, Editor-in-chief, El Gabas

Editor-in-chief, El Bayan

Editor-in-chief, Alwan

Nagib Adam Kamaradin, Editor-in-chief, El Anban

Mr. Mohammed Mohi Eddin Titawi, Editor-in-chief, Al Osbou newspaper, and Deputy Director of the Sudan Journalist Union

Mr. Zafir, Editor-in-chief of the student newspaper Anhagiga

Mr. Abdel Sid, journalist for Ash Sharq Al Awsat

Mr. Alula Berhe Kidani, freelance writer, Al-Rai Al-Akhar

Academics

Professor Awad Abdalla, Dean of the Faculty of Law, University of Khartoum

Professor Sara Nugdalla, university lecturer, Sudanese Women Alliance

Dr. Al-Taib Hag Ateya, Dean of the Department of Communication, University of Khartoum

United Nations community

The United Nations Regional Coordinator, the United Nations Information Centre, UNICEF, UNDP, FAO, UNHCHR, UNIDO, WFP, WHO

Non-governmental organizations

National NGOS: Sudanese Council of Voluntary Associations (SCOVA); representatives of the Women's Union

International NGOs: International Federation of the Red Cross and Red Crescent Societies, Save the Children, GOAL, Fellowship for African Relief, International Rescue Committee, CARE, German Agro Action (GAA), the African Centre for the Constructive Resolution of Disputes (ACORD), Oxfam, Action contre la faim.

Others

Mr. Fathi Khalil, President of the Bar Association

Mr. Galal Ali Loffti, President of the Constitutional Court

Mohammed Abel Dayan, judge of the Appeal Court

Dafalla El Hag Youssif Medani, lawyer and Commissioner for Oaths

Mr. Salah Moubarak, representative of the Sudanese Jurist Union

Representatives of the Catholic Church

Representatives of the student community

Representative of the writers' community

Members of the opposition parties

Dr. Toby Madut and Omar Sid Ahmed, Democratic Forces Front, Sudanese Human Rights Group

Mr. Mustafa Abdel Gadir, member of the defence bar

Ms. Ashwagh Youssif, lawyer, Sudanese Human Rights Centre

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36

Addendum

Report on the mission to Ireland

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Introduction

1. This report has been prepared pursuant to Commission on Human Rights resolution 1999/36 of 26 April 1999. It presents and analyses information received by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, during his visit to Ireland from 18 to 22 October 1999, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By a letter dated 13 April 1999 addressed to the Permanent Mission of Ireland to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Ireland. On 1 September 1999, the Government of Ireland granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Ireland in discharging his mandate. He highly appreciates the assistance received from the Government in the organization of his visit. He would like to convey his gratitude especially to the Minister for Foreign Affairs and his staff, who helped make this visit successful.

4. During his visit, the Special Rapporteur met with representatives of the Government, Members of Parliament and members of the judiciary. He also met with representatives of non-governmental organizations active in the field of human rights, academics, writers, professionals of the media sector and other members of civil society who were of interest for his mandate.

5. A list of persons with whom the Special Rapporteur met during the visit is included as an annex.

I. BACKGROUND AND CONTEXT

6. Over the previous decades Ireland has witnessed a marked transition from being a highly traditional, agricultural and church-dominated society towards a more modern, secular and service-oriented one. This development is most noticeable in the growth of a highly dynamic information technology sector, particularly in and around Dublin, while the west of Ireland is still more traditional and rural than the rest of the country. Ireland is currently attempting to become the hub of e-commerce in Europe, which will continue to engender profound economic and societal changes. In view of this new prosperity, new challenges are emerging in Ireland such as the arrival of asylum-seekers. Ireland, formerly a country characterized by emigration, appeared unprepared by this new phenomenon.

7. As far as freedom of opinion and expression is concerned, the print media in Ireland is mainly owned by the private sector, with one company, Independent News and Media, largely dominating the market of the Sunday and the provincial newspapers in particular. Some United Kingdom newspapers also publish an Irish version. Cable and satellite television, in addition to state-controlled television, and the broadcasting in Ireland of United Kingdom

programmes, allow a wide possibility of choice. Digital terrestrial television will be soon introduced and regulated under a new Broadcasting Bill, now proceeding at the Oireachtas (Parliament).

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

8. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Ireland.

1. International obligations

9. Ireland has accepted a wide range of international obligations in the field of human rights. It is a party to the International Covenant on Civil and Political Rights, including its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. It has not acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. International agreements ratified by Ireland are not self-executing and the provisions of the International Covenants on Human Rights cannot be invoked before, or directly enforced by, the courts.

10. Furthermore, Ireland ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1953, as well as the right of individual petition. However, it has not incorporated the Convention into its own law. Ireland is also a participating State of the Organization for Security and Cooperation in Europe (OSCE).

2. National legislation

(a) The Constitution

11. Article 40, paragraph 6.1, of the 1937 Constitution provides for freedom of opinion and expression. It states that "the State guarantees liberty for the exercise of the [...] right of the citizens to express freely their convictions and opinions". This right, however, is "subject to public order and morality".

12. Article 40, paragraph 6.1, also refers to the media, which is defined as "organs of public opinion, such as the radio, the press, the cinema", and recognizes "their rightful liberty of expression, including criticism of Government policy" but forbids their use "to undermine public order or morality or the authority of the State". Also, "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law."

(b) The Laws regarding the press and other mass media

13. As print media are not subject to a specific statutory regulation, there are other laws which regulate issues strictly related to the press. Among them is the Defamation Act, 1961, according to which newspapers and periodicals accused of libel have to prove that defamatory words employed are true. The Offences Against the State Act, 1939, defines several offences in relation to seditious documents, including documents which contain matter calculated or tending to undermine public order or the authority of the State, or which allege, imply or suggest that the government in power under the Constitution is not the lawful government, or that the military forces maintained under the Constitution are not the lawful military forces of the State. Under the Official Secrets Act, 1963, the State has the power to prosecute unauthorized disclosures of sensitive government information. The law on contempt of court is largely judge-made and it is based on the general principle that the courts have an inherent jurisdiction to ensure that the administration of justice is not obstructed and that courts orders are obeyed.

14. With reference to television and radio, the Department of Arts, Heritage, Gaeltacht and the Islands is responsible for the formulation of national policy relating to the broadcasting and the audiovisual industry. The Broadcasting Act, 1960, creates an authority to be established for the purpose of providing a national television and sound broadcasting service. Radio Telefis Eireann (RTÉ), the Irish national broadcasting organization, is a statutory corporation and it is subject to the nine member RTÉ Authority, appointed by the Government. Amending statutes enacted in 1976 and 1990 modified RTÉ.

15. In order to control private broadcasting, the Radio and Television Act, 1988, established an Independent Radio and Television Commission. This provides for the arrangement of sound broadcasting services in specified areas including a national radio service and a television programme service, in addition to any broadcasting services provided by RTÉ, and it ensures that every independent radio and television contractor complies with the provisions of the 1988 Act, and with the terms of its broadcasting contract with the IRTC. The IRTC is a self-financing agency, drawing its income from advertising levies paid by franchised stations. The 10 Commission members are appointed by the Government and hold office for a period of five years.

16. A new Broadcasting Bill, 1999, is now proceeding at the Oireachtas (Parliament). If passed into law, this bill will provide a structure for the introduction and regulation of digital television services. The bill also provides for the name of the Independent Radio and Television Commission to be changed to the Broadcasting Commission of Ireland. This body will be given expanded powers and functions with regard to the regulation of digital broadcasting when entering into contracts with providers of broadcast content and drawing up codes and rules relating to the broadcast programme material, broadcast advertising and a range of other related matters.

17. With reference to the Internet, the Child Trafficking and Pornography Act, 1998, applies to the material disseminated over the Internet. The Taoiseach (Prime Minister) requested the Minister for Justice, Equality and Law Reform to establish a Working Group on the Illegal and Harmful Use of the Internet. The first report of this Working Group published in July 1998 proposed a package of strategic measures to respond in an appropriate way to the illegal and harmful use of the Internet.

(c) Other legislation and institutions with a direct impact on the exercise of the right to freedom of opinion and expression

18. The Freedom of Information Act, 1997, enables members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies. This Act establishes the post of Information Commissioner, who is appointed by the President, approved by the Parliament and nominated by the Government for a six-year appointment. The Information Commissioner has the power to issue legally binding decisions.

19. The Data Protection Act, 1988, regulates information presented in electronic format. This Act gives effect to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data signed at Strasbourg on 28 January 1981, and regulates in accordance with its provisions the collection, processing, keeping, use and disclosure of certain information relating to individuals that is processed automatically.

20. The following laws regulate censorship and classification of publications, films and videos: the Censorship of Films Acts, 1923, establishes the office of the Official Censor of Films and a Censor of Film Board; the Censorship of Films (Amendment) Act, 1992, provides for the appointment of Assistant Censors to assist the Official Censor in the performance of his or her functions under this legislation; the Censorship of Film (Amendment) Act, 1970, introduced a more liberalized approach in this area. The Video Recordings Act, 1989, regulates the home video sale and rental industry by preventing the commercial importation, sale and distribution of pornographic videos, and certifies and classifies videos.

21. The Censorship of Publications Acts, 1929 to 1967, regulate the area of publication. The Censorship of Publications Act, 1946, provides for a Censorship of Publications Board of five persons appointed by the Minister of Justice and for a similarly appointed Censorship of Publications Appeal Board, whose chairman is to be a judge or a practising barrister or solicitor. The Censorship of Publications Act, 1967, mitigates the severity of the code by placing a 12-year limit on the life of any prohibition order, past and future, made on a book on the ground that it was indecent or obscene.

22. Article 40, paragraph 3.3, of the 1937 Constitution (as amended by the Fourteenth Amendment to the Constitution Act, 1992) and the Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995, regulate information about abortion.

23. Under the Good Friday Agreement of 1998, Ireland and the United Kingdom of Great Britain and Northern Ireland decided to establish an independent Human Rights Commission, one in Ireland and one in Northern Ireland which will cooperate together.

According to the new Human Rights Commission Bill, now proceeding at the Oireachtas, the new Commission will be independent of the Government in the performance of its functions. Its tasks will be to keep the adequacy and effectiveness of law and practice in Ireland and to consult international bodies with expertise in the area of human rights, to recommend to the Government measures to further strengthen human rights protection and to promote awareness and understanding of human rights issues. The Commission will also be able to prepare and to publish research and to offer assistance to individuals pursuing human rights cases.

B. Principal observations and concerns

1. The media

24. In order to assess the situation of the right to freedom of opinion and expression in Ireland, the Special Rapporteur met with a large number of media professionals, as well as with members of the journalists' association, the National Union of Journalists (NUJ).

(a) The print media

25. According to information made available to the Special Rapporteur, the Irish newspaper market is broadly divided into two categories: newspapers (both Irish and British titles) which are distributed throughout the country, and newspapers which have a distribution pattern targeted at local readers. Among the newspapers distributed nationally, there are 16 Irish titles and 19 British titles. Among the ones distributed locally, there are over 60 titles. It was brought to the Special Rapporteur's attention that the Irish newspaper market is largely dominated by the Independent News and Media plc Group. The group owns the Irish Independent, which is the morning paper with the largest circulation; the Sunday Independent, the Sunday Tribune and the Sunday World, which are all Sunday newspapers; the Evening Herald, the only national evening newspaper, and more than 50 per cent of the provincial titles throughout the country. The Special Rapporteur was also informed that there is competition caused by imported newspapers from the United Kingdom. These are often sold at a lower price than local newspapers and, according to some sources, tabloids in particular have introduced a lower standard of journalistic ethics into the Irish newspaper market.

26. Although the press in Ireland is independent and free from all controls, the Special Rapporteur was informed of a certain number of issues of concern which deserve particular attention. He was informed that in Ireland there is no explicit legal protection for journalists with regard to their right to protect sources of confidential information.[1] This matter was addressed by the Law Reform Commission in 1994 and by majority they decided not to introduce in Ireland a provision similar to Section 10 of the United Kingdom Contempt of Court Act, 1981,[2] but to leave the question to the courts. It was reported that generally courts try to avoid ordering journalists to reveal sources. Only two journalists have been jailed so far in Ireland for refusing to identify sources: one in the 1930s and one in the early 1970s. More recently, in 1995, Susan O'Keeffe of Granada Television, who made a programme that led the Government to set up a Tribunal of Inquiry on beef processing, was prosecuted for refusing to name her sources to this very Tribunal. She was subsequently acquitted on a technicality.

27. The Special Rapporteur was also informed that the situation concerning this issue has developed since the 1996 Goodwin case,[3] in which the European Court of Human Rights had ruled that constraining journalists to reveal sources was contrary to article 10 of the European Convention on Human Rights,[4] which protects freedom of expression. According to Irish authorities, there is an emerging recognition in the courts that journalists should not be constrained to reveal their sources.

28. Another issue of concern brought up to the Special Rapporteur is regarding civil actions for defamation, which according to the National Union of Journalists and other sources, may seriously inhibit journalism in Ireland. It was reported that newspapers may feel restrained by the high cost of legal proceedings to properly investigate those in power. This issue is described below in paragraphs 41 to 46.

29. The Special Rapporteur was also informed of the implementation of the Freedom of Expression Act, 1997, concerning access to certain public reports. Journalists represented approximately 20 per cent of requesters under this Act. It was reported to the Special Rapporteur that a journalist of the Sunday Tribune newspaper applied on 12 January 1999 to the Office of the Houses of the Oireachtas to receive information relating to expenses claimed by each member of the Oireachtas (in particular travelling, telephone, post, secretarial and office administration) since April 1998. The Office of the Houses of the Oireachtas decided to release the figures of the expenses but not the names of the members of the Oireachtas to whom those expenses were related. When the journalist appealed against this decision, the Information Commissioner decided on 27 July 1999 that the names also should be revealed. Now the information is in the public domain and the Special Rapporteur was told that probably next year it would be published as a matter of course. The Special Rapporteur praised this way of implementing the Freedom of Information Act as this made the Oireachtas more accountable and accessible to the general public.

(b) The broadcast media

30. Broadcasting in Ireland is largely State-controlled but it has no monopolistic position due to the presence of cable and satellite television. The Broadcasting Complaints Commission investigates complaints about programming of both public and private broadcasting.

31. Radio Telefís Éireann is the Irish national broadcasting organization and it is subject to the RTÉ Authority. This body, composed of nine members appointed by the Government, meets monthly and acts as RTÉ's Board, making policy and guiding corporate direction. The RTÉ Executive Board is responsible for the day-to-day running and is chaired by the Director-General. RTÉ is independent in its editorial decisions. Funding comes from television licence income and commercial revenue, which sustains three national television stations, four national radio networks, and one local radio station.

32. The Special Rapporteur was informed that RTÉ has a statutory duty of fairness and impartiality: when the Government's point of view is broadcast, the opposing point of view is broadcast on the same day. It was brought to the Special Rapporteur's attention that further to a High Court judgement in 1998 currently on appeal (the Supreme Court heard the case in October 1999 but reserved its judgement), RTÉ has to divide its party political broadcasts

equally between pro and anti sides in referendum campaigns, after it had been accused of acting unfairly and in breach of its statutory duties under the Broadcasting Acts in its allocation of time for uncontested party political and other broadcasts in various referendums.[5] The only restriction on broadcasting, not applied since 1994, was the one made under Section 31 of the Broadcasting Authority Act, 1960, which is described below in paragraphs 47 to 50. The Special Rapporteur noted with satisfaction that RTÉ had launched in June 1999 a new radio information service for Kosovar refugees in Ireland broadcast in Albanian. The programming includes news, Albanian folk and popular music as well as English lessons.

33. RTÉ's monopoly ended in the 1980s with the emergence of private broadcasting. The Radio and Television Act, 1988, establishes the Independent Radio and Television Commission (IRTC) which has the responsibility of creating, operating, monitoring and developing independent broadcasting in Ireland. According to the new 1999 Broadcasting Bill, the IRTC will be renamed the Broadcasting Commission of Ireland and its role and responsibility will be expanded, particularly in relation to the regulation of new digital services and the responsibility to draw up codes of standards for all broadcasters.

34. The Special Rapporteur noted with interest the development, encouraged by the IRTC, of Community Radio services. A community radio station is owned and controlled by a not-for-profit organization whose structure provides for membership, management, operation and programming primarily by members of the community at large. In this way, the community served can participate at all levels. Its programming should be based on community access and should reflect the special interests and needs of the listeners that a station is licensed to serve. Another project which raised the Special Rapporteur's interest was Women on Air. This project aims at promoting equality of opportunity for women in independent radio broadcasting by training and policy and management initiatives. Also, the advent of digital terrestrial television will create new opportunities for programmes closer to specific matters such as women and minority issues, especially in rural areas of Ireland. The Special Rapporteur hopes that this kind of services can provide a right of access to minority and marginalized groups and promote and protect cultural and linguistic diversity.

(c) New information technologies

35. In 1997, the Government set up a Working Group on the Illegal and Harmful Use of the Internet, composed of representatives from both the public and the private sector. One of the main concerns for the Working Group was to set a balance between ensuring that Ireland can benefit from the enormous advantages that the Internet offers and, at the same time, protecting users, in particular children, from its illegal and harmful use. The Working Group in its first report made a list of illegal uses of the Internet, which can include actions causing injury to children (child pornography, child trafficking); actions causing injury to human dignity (incitement to racial hatred); illegal gambling; infringements of privacy and intellectual property rights; libel; and threats to economic security, information security and national security. According to the Working Group, laws should be applied against illegal uses of the Internet. The interpretation of "harmful" is more subjective and culturally specific. So in cases of "harmful" uses of the Internet, it should be the filtering mechanisms within the technology itself which should examine and reject unsuitable information.

36. The Special Rapporteur noted with satisfaction that the Working Group recommended an approach of non-intervention of the State. Instead, a system of self-regulation should be set up by the Internet service providers in order to tackle these issues. Such a system will include a national public hotline to report illegal use of the Internet on sites maintained by Irish-based Internet service providers, an Advisory Board bringing together the partners needed to ensure successful self-regulation, and the introduction of appropriate awareness measures. The Advisory Board will maintain a close contact with similar groups in Europe due to the global character of Internet.

37. The Child Trafficking and Pornography Act, 1998, is one of the first Irish legislative initiatives to deal with Internet. It creates several offences relating to child pornography. It provides that Internet service providers may be accused either of causing or facilitating the distribution, import or export of child pornography or the storage of such material. However, the Special Rapporteur was informed that it is very difficult for Internet service providers to control what their users access and they may be faced with a choice between prosecution and disconnecting Ireland from the Internet.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) The legal restrictions on freedom of expression

(i) Censorship

38. The Special Rapporteur's attention was drawn to the fact that films, videos, books and periodicals in Ireland are subject to censorship. In 1993, the United Nations Human Rights Committee condemned the Irish legislation on this issue and suggested "that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board".[6] Recently, following the In Dublin case, in which a periodical was banned in summer 1999 for advertising massage parlours, it was reported to the Special Rapporteur that the Government will be undertaking a review of Irish censorship laws because they are obsolete. Various sources confirmed to the Special Rapporteur that the Irish censorship regime is characterized by a lack of transparency and accountability.

39. Censorship of films and videos is exercised under the Censorship of Films Act, 1923 to 1992, and the Video Recordings Act, 1989 and 1992. The Official Censor of Films, appointed by the Minister of Justice, must screen and classify all films and videos before they can be sold or shown in Ireland. The Special Rapporteur was informed during a meeting with one of the Assistant Censors that now, however, the focus is more on child protection and on classifying contents in order to allow people greater choice. As concerns movies, in the last years only half a dozen movies were prohibited,[7] generally for reasons of gratuitous violence, such as Natural Born Killers, directed by Oliver Stone. In general, other films which may fall in these categories are either subject to a higher classification or to cuts, for instance, when they show techniques which younger people could imitate copycat-like. With regard to videos, the Official Censor prohibits hard-core pornography. A nine-member Appeal Board, always appointed by the Minister of Justice, reviews appeals to the decisions taken by the Censor within a three-month period.

40. Censorship of publication is regulated by the Censorship of Publications Acts 1929 to 1967. A five-person Censorship of Publications Board appointed by the Minister of Justice examines publications referred to it by a customs officer or a member of the general public, or books on its own initiative. It prohibits the sale and distribution of a book or a periodical if it decides that it is obscene or indecent. The Board meets in private and it is under no obligation to provide reasons for the decisions it takes. The Special Rapporteur was informed that also the procedure for appeals is secret as the Censorship of Publication Appeals Board meets in private. The Censorship of Publication Act, 1967, mitigated the severity of the code by limiting the prohibition order on a book to 12 years. In this way most of the books banned before 1955, when the Board was much more conservative, were circulated again in Ireland.

(ii) Defamation

41. The Special Rapporteur was informed by the National Union of Journalists (NUJ) and other sources that libel actions are seriously inhibiting journalism in Ireland as these cases can create problems for newspapers, in particular the small ones, in terms of loss of money and time. In the Defamation Act, 1961, the burden of proving the publication to be true is on the defendant. Also, there is no defence when a media outlet has published false statements of fact that defame a politician or other public figure, even if the defendant has taken reasonable care to verify that the statement was true and it was reasonable to publish the matter as part of a discussion of a matter of public interest.

42. In December 1991, the Law Reform Commission published a report on the Civil Law of Defamation recommending the repeal of the Defamation Act, 1961, and the enactment of new legislation. Among the recommendations, the Law Reform Commission proposed that "defamation" should be defined for the purposes of legislation as "publication by any means of defamatory matter concerning the plaintiff". "Defamatory matter" is defined as "matter which is (a) untrue, and (b) tends to injure the plaintiff's reputation [...] in the eyes of reasonable members of the community". The burden of the proof, according to the Commission, should be on the plaintiff "to show that there was publication, that the matter contained in the publication was defamatory (which also means that its falsity must be established) and that the defamatory matter concerned the plaintiff". The Law Reform Commission also proposed not to consider an apology or offer of apology to the plaintiff as an admission of liability. In 1996 the Commission on the Newspaper Industry, set up by the Government, recommended "the desirability of changes in the libel laws". This Commission also analysed cases of inadvertent libel, caused by mistakes arising even if there was due care and no negligence, and proposed that the person involved should not be entitled to general damages if she or he did not suffer pecuniary loss as a result of the publication of this kind of libel.

43. The Special Rapporteur was also told that there is inadequate judicial control over the amount of damages which a jury may award for libel. In July 1999, the Supreme Court upheld an award of £Ir 300,000 to a politician, Mr. De Rossa, accused in a 1992 article by the Sunday Independent, to be linked with the Communist Party of the Soviet Union and other criminal activities. The Supreme Court also rejected the proposals that a proportionality standard should be applied to the size of the awards and that juries should be given specific instructions about the criteria they should apply in making such awards.[8] According to the NUJ, media organizations pay an estimated £Ir 8 million to 10 million per year in defamation costs. Most of the cases,

however, are settled financially before going to court. Now newspapers, in order to avoid defamation cases, train journalists to avoid libel and have lawyers on call 24 hours, in order to verify the absence of defamatory material in the newspaper before it is distributed.

44. It was reported to the Special Rapporteur that criminal libel is prosecuted very rarely. This is an offence which requires proof of a serious defamatory statement against a person and a prosecution can be brought against a newspaper only with the High Court authorization. This authorization is reportedly granted only very infrequently. The Law Reform Commission, in December 1991, recommended in its report on the crime of libel to retain the offence of defamatory libel but in a more confined form. In this regard, the Special Rapporteur welcomes the fact that the Supreme Court has recently declared blasphemous libel unconstitutional.[9]

45. However, the Special Rapporteur noted with concern that there is neither public nor political support for a change in the law on defamation. He was informed by various sources that the public generally does not have sympathy for newspapers in defamation cases and is not in favour of publication of private details. In particular, the Special Rapporteur was told that there is a debate under way as to how free speech and privacy should be balanced. This is particularly important as Irish people not only give a high value to personal reputation but "good name" is also mentioned in the Constitution.[10] Accordingly, some consider that newspapers should not publish information on private matters which have no effect on public life. Furthermore, there is allegedly a common perception that newspapers are powerful and possess considerable financial resources, and if a person is misrepresented in the media and has no money to go to Court, he or she has no other choice of recourse. A possible solution to this problem, suggested to the Special Rapporteur by various persons both at the official and unofficial level, would be the creation of a press ombudsman or a press council, funded by the media industry. It was also suggested that the Defamation Act should be reformed in order to allow a more simple process if, for instance, an apology or a redress is enough for the victim of the libel.

46. It was recently brought to the Special Rapporteur's attention that, after years of political inactivity on this issue notwithstanding the Law Reform Commission's recommendations, a new Defamation Bill is under preparation.

(iii) Section 31 of the Broadcasting Authority Act, 1960

47. The Special Rapporteur was informed that Section 31 of the Broadcasting Authority Act, 1960,[11] allows the Minister of Arts, Heritage, Gaeltacht and the Islands to order radio and television broadcasters not to broadcast any matter that is "likely to promote or incite to crime or which would tend to undermine the authority of the state." Section 31 was amended by Section 12 of the Radio and Television Act, 1988, to include local radio stations.

48. From 1971 to 1994, ministerial orders were made annually under this provision prohibiting interviews with spokespersons for unlawful organizations or for Sinn Fein, or election broadcasts on their behalf. This prohibition operates regardless of the content of the interview or broadcast. Since 1994, however, there has been no order in force under Section 31, but the Section remains valid.

49. In 1991 the European Commission of Human Rights declared inadmissible an application[12] brought by journalists and broadcasters challenging the Irish Government over Section 31 of the Broadcasting Authority Act on the grounds that the complaint was manifestly ill-founded. However, in 1993, the United Nations Human Rights Committee noted that "The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under article 19, paragraph 2, of the Covenant."[13]

50. With regard to this matter, the Special Rapporteur considers that public radio and television should be independent of the State and that legislation must exclude the possibility of State authorities influencing the programmes in such a way that would damage the balance, free expression and impartiality of information. He therefore welcomes suggestions made by various sources of amending the Act.

(iv) Official Secrets Act

51. The Official Secrets Act, 1963, places wide-ranging restrictions on access to government information and allows the State to prosecute unapproved revelations of sensitive government information. In 1985 a journalist was fined under the Official Secrets Act for having published information that was not authorized.[14]

52. Some sources told the Special Rapporteur that when the Freedom of Information Act was introduced, it was promised that it would overturn the presumption of secrecy established under the Official Secrets Act. In reality, public servants are allowed to disclose information, but only under the Freedom of Information Act. The Official Secrets Act can continue to be used in the case of disclosures of information to which the Freedom of Opinion Act does not apply, for example pre-April 1998 records or records of bodies not listed under the Freedom of Information Act.

(b) Right to seek and receive information

53. The right to freedom of opinion and expression includes the right to seek and receive information, which also means that citizens have the right to obtain information of public interest and have the right to inspect official documents. The Special Rapporteur noted with satisfaction that in Ireland the Freedom of Information Act, 1997, allows members of the general public to access information held by public bodies, to amend official information relating to them where it is incomplete, incorrect or misleading, and to obtain reasons for decisions affecting them. Various sources told the Special Rapporteur that this Act has worked reasonably well since it came into force on 21 April 1998, and reported a new culture of openness in many government departments and State agencies. The media, in particular, seems to make good use of the legislation.

54. The Freedom of Information Act, 1997, distinguishes between two types of official information: personal information and official records. An individual may gain access to his or her own personal information, no matter how old it is. It is possible also to access official information, with a few exceptions, to records held by government departments, local government authorities, health boards and a list of public bodies, created after the Act came into

force. Additional public bodies can be brought within the scope of the Act by Ministerial regulations. This Act also establishes an Information Commissioner office. If the public body refuses to give the information also following an appeal, the information seeker can appeal to the Information Commissioner. The Information Commissioner can demand access to all documents relating to an appeal and decide upon it. As the information has to be released if it is in the public interest, the Commissioner has also the power to decide what "public interest" is. Many sources reported to the Special Rapporteur that the current Information Commissioner, Mr. Kevin Murphy, who is also the Ombudsman, has been careful in ensuring that the broadest possible definition of public interest is used in applying the appeals system under the Act.

55. One concern brought up to the Special Rapporteur with regard to this Act was the exclusion for the time being of the Garda Siochána (the police force) from the scope of the Act. Some sources suggested that the Act, once it starts to work effectively, should cover the Garda Siochána, except for situations relating to national security. It was underlined that when the police are subject to public scrutiny, they generally become more accountable and effective. Another concern expressed to the Special Rapporteur referred to the lack of retrospective effect of the Act. Some sources also warned the Special Rapporteur of the possible danger that the Act may be restricted through amendment in cases where the Information Commissioner delivers some decisions with which the political forces may not agree, as has already happened in other countries.

(c) Women

56. A number of issues relating to women's right to freedom of opinion and expression in Ireland are of concern to the Special Rapporteur.

57. With regard to the right to seek and receive information, the Special Rapporteur was informed that, under Irish law, access to information in a number of areas which are primarily, but not exclusively, of concern to women is reportedly lacking.

58. Abortion is illegal in Ireland, except where the life of a woman is seriously at risk. In the past, this has meant that access to information about abortion services outside of Ireland has also been illegal. Access to information about abortion services outside of Ireland is now regulated by article 40.3.3 of the Constitution as amended by the Fourteenth Amendment to the Constitution Act 1992 and the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995. The effect of the amendment was to guarantee women's freedom to obtain information, verbally or in print, which is likely to be required for the purposes of having a legal abortion in another State. However, the law restricts the available means and content of the information that may lawfully be provided. According to the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, information about pregnancy termination services cannot be distributed without solicitation by the recipient in books, newspapers, journals, magazines or other document, or cannot appear in a public notice or in a film or sound recording. Moreover, any information that may legally be provided must not advocate abortion.

59. The Act does not restrict information of a more general nature about abortion. However, all advocacy of abortion and advertisements for abortion are illegal pursuant to the Censorship of

Publications Act, 1929, which makes it illegal to print, publish or sell or otherwise distribute any book or publication which could reasonably be supposed to advocate the procurement of abortion or miscarriage by any method. The Special Rapporteur believes that as the right to freedom of opinion and expression includes the right to access information which may offend some members of the public (in this case being those who oppose abortion) there should not be any restriction on when and what kind of information regarding abortion is available to be accessed.

60. Concerns were expressed to the Special Rapporteur on the inadequate provision of information regarding health-care issues affecting women including medical conditions, available prognoses and treatment options. Furthermore, the Special Rapporteur was informed of a lack of information regarding childcare benefits and childcare options, as well as women's rights under the social welfare system. Concerns were expressed that in relation to the latter, the lack of information runs the risk of excluding women from social welfare services including job schemes. The Special Rapporteur was encouraged to learn of the availability of information, including legal and medical information, regarding rape and sexual assault issued by the Dublin Rape Crisis Centre. He believes that all women should have the possibility of accessing such information, particularly rural women, women asylum-seekers and women members of the Traveller community.

61. In addition to these concerns, the Special Rapporteur was informed that pregnancy information services, including counselling agencies, are currently unregulated in Ireland. Concerns were raised that the Government's failure to regulate these services means that women are at risk of receiving inaccurate and/or misleading information about these services and are open to being counselled by personnel without adequate training.

62. The under-representation of women in public life was also brought to the attention of the Special Rapporteur. He was informed that despite some increase in the proportion of women in politics at both local and national levels, the proportion of elected Members of Parliament who are women has been hovering around the 12 per cent mark for the past several elections. The Special Rapporteur noted that encouraging women to participate in the political arena as well as in public sector employment should be promoted in order that women may exercise their rights to freedom of opinion and expression in the same way as men.

63. A final concern noted by the Special Rapporteur is the lack of gender-specific information on the impact of government policies on women. Concerns were raised that the absence of gender-specific statistics has serious implications for the rights of women to access resources and to participate fully in society.

(d) Minorities

64. The Irish Travellers are an indigenous minority group of 25,000 people who have been living in Ireland for centuries and represent the largest minority in Ireland. For this reason, the Special Rapporteur wishes to concentrate on this specific ethnic minority and assess their access to the right to freedom of opinion and expression.

65. In this regard, the Special Rapporteur was informed that in the last 10 years there has been some progress on this issue in Ireland. There is a growing recognition of cultural diversity and Travellers are now starting to articulate their own concerns and interests in order to become more visible. A Platform against Racism, a coalition of non-governmental organizations committed to developing ways to combat racism and to promoting interculturalism, has been set up. Travellers' organizations also contribute to put Travellers' issues and anti-racism on the agendas of other organizations and projects, such as the Community Development Programme, youth and women's organizations. However, a lack of effective domestic anti-discrimination legislation and the fact that Ireland has not ratified yet the International Convention on the Elimination of All Forms of Racial Discrimination makes it difficult for non-governmental organizations to work effectively on these issues. The Special Rapporteur was told that of the existing legislation concerning these issues, the Employment Equality Act, 1998, outlaws job discrimination against Travellers and that the Prohibition of Incitement to Hatred Act, 1991, needs to be more effective and therefore reviewed accordingly. The Government also established a monitoring committee to supervise the implementation of key recommendations of the 1995 Task Force Report on the Travellers.

66. It was also reported to the Special Rapporteur that Travellers are often represented by the media only in specific minority-related roles, and rarely as integrated and active participants of society. In particular, sometimes local newspapers and radios reportedly feature anti-Traveller declarations, often by quoting local politicians or members of the Garda making a discriminatory comment on Travellers. The Commission on the Newspaper Industry noted in its June 1996 report that "concern does exist with particular reference to the question of the treatment of minority groups such as Travellers". The Special Rapporteur was informed that the National Union of Journalists has agreed to some guidelines for all its members to follow when dealing with race relations subjects. With reference to Travellers, the criteria are to "only mention the word Gypsy or Traveller if strictly relevant or accurate" and to "strive to promote the realization that the Travellers' community is comprised of full citizens of Great Britain and Ireland whose civil rights are seldom adequately vindicated, and who often suffer much hurt and damage through misuse by the media".

(e) Refugees and migrants

67. The arrival of refugees and asylum-seekers in Ireland is a recent phenomenon and, even if the numbers are low compared to other European countries, the Special Rapporteur was informed that this is becoming an issue of major concern in the country. According to government statistics, 5,497 persons applied for asylum between January and October 1999 compared with 424 for the whole of 1995. The Refugee Act, 1996, which was amended in 1999, regulates procedural aspects of the Refugee Status Determination process and the Department of Justice, Equality and Law Reform processes all requests for asylum. An appeal against a decision to refuse refugee status is determined by an Appeal Authority appointed by the Minister for Justice, Equality and Law Reform for this specific purpose. In this regard, it was suggested to the Special Rapporteur that it would be more proper if an independent authority, such as the Ombudsman or an independent refugee commissioner, could review such decisions.

68. The Special Rapporteur's attention was drawn to the fact that the Irish media sometimes, especially in the past few years, contributed to intensify the prejudices of the Irish population

against refugees and asylum-seekers. In fact, the Special Rapporteur was told that, especially in 1997, the media coverage of the refugees often criminalized and demonized them, labelling them as frauds, who were "economic migrants" stealing jobs and houses from Irish people. However, according to information received by the Special Rapporteur, the media are now trying to have a more constructive approach to this issue. For instance, he was told, RTÉ is reportedly trying to cover refugees and asylum-seekers in a balanced way, by adopting a tolerant and welcoming approach. RTÉ is also legally bound to broadcast the opposite point of view, but it is careful to avoid hate speeches.

69. The Special Rapporteur noted with appreciation the activities of Calypso Productions, a theatre and production company, which uses inventive drama to explore human rights, social justice, inclusion and development. Every year, since 1993, Calypso Productions has organized a theatrical production in conjunction with education programmes (education packs, workshops and seminars with schools and community groups) to build awareness and promote debate on the issues in question (for 1997 it was racism, for 1998 refugees and asylum-seekers). The Special Rapporteur would like to praise this kind of activities for giving a voice to marginalized groups and to propose it as an example to be followed in other countries.

III. CONCLUDING OBSERVATIONS

70. The Special Rapporteur welcomes the expressed commitment of the Government of Ireland to democracy, the rule of law and human rights, in particular the right to freedom of opinion and expression.

71. The Special Rapporteur notes that, although Ireland has not incorporated yet in its law the European Convention for the Protection of Human Rights and Fundamental Freedoms and the fact that the ratified international agreements are not self-executing, it respects international standards in the field of human rights, particularly the legal guarantees offered for the right to freedom of opinion and expression. In this context, he welcomes the role played by the Supreme Court in keeping the legislation concerning this right up to date, and in line with modern times and challenges. He also welcomes the fact that the establishment of a Human Rights Commission is under way.

72. Furthermore, the Special Rapporteur can assert that freedom of opinion and expression is widely apparent in Ireland. He notes with satisfaction that there is a plurality of viewpoints and voices and that the State-owned television, RTÉ, appears fair and impartial, reporting all aspects of national life and providing a diversity of viewpoints. Also laws governing the registration of media and the allocation of broadcasting seem clear and balanced.

73. However, the Special Rapporteur is concerned at the use and implementation of certain laws to restrict the right to freedom of opinion and expression. With reference to Section 31 of the Broadcasting Authority Act, he is of the view that no restriction should be imposed unless it has been demonstrated that the restriction is necessary to protect a legitimate national security interest. He is also concerned at the negative effects produced by libel and defamation suits which, in extreme cases, may create a climate of "libel chill". Writers, editors and publishers may become increasingly reluctant to report and publish matters of public interest because of the large costs of defending such actions and the big awards granted in these cases. This creates a

restraint on the freedom of expression, access to information and the free exchange of ideas. He welcomes the fact that, although censorship exists, it is now seldom implemented, but he expresses concern about the secrecy surrounding the decision-making procedure. The Special Rapporteur would therefore like to emphasize his view that the right to freedom of expression should not be restricted by indirect methods or means.

74. The Special Rapporteur notes that the protection of sources assumes primary importance for journalists, because a lack of this guarantee may create obstacles to journalists' right to seek and receive information, as sources will no longer disclose information on matters of public interest. Any compulsion to reveal sources should therefore be limited to exceptional circumstances where a vital public or individual interest is at stake. The Special Rapporteur welcomes the trend to resolve in favour of freedom of information the conflicts in the law affecting the right of journalists to protect their sources.

75. The Special Rapporteur welcomes the introduction of the Freedom of Information Act, 1997, and believes that the law has been working reasonably well since it came into force in April 1998. He is of the view that a democracy can only work if the citizens and their elected representatives are fully informed. Therefore, with the exception of a few types of documents, it is desirable to make government documents public in order to allow the citizen to know how public funds are disbursed. Thus, the Special Rapporteur notes that it is indispensable that journalists should have access to information held by public authorities, granted on an equitable and impartial basis, so they can carry out their role as a watchdog in a democratic society.

76. He notes with satisfaction that the Working Group on the Illegal and Harmful Use of the Internet recommended an approach of non-intervention of the State. The Special Rapporteur wishes to reiterate his opinion that the new information technologies, in particular Internet, are inherently democratic and provide individuals with access to unmatched information and sources. He believes that the tendency of Governments to consider regulation rather than enhancement of access to the Internet is to be strongly checked and, therefore, he appreciates that Ireland has opted for a self-regulatory approach. The Special Rapporteur wishes to point out that the new challenge presented by Internet is rather how to fully integrate Internet in a process which benefits all equally.

77. The Special Rapporteur notes with appreciation the efforts undertaken by the Government of Ireland to encourage the participation of women in the political arena as well as in the public sector. However, he notes that additional efforts should be undertaken as, for instance, the proportion of elected members of the Oireachtas who are women decreased after the last election. He welcomes the efforts made by media to highlight women's issues by also proposing public awareness campaigns on various forms of violence against women. The Special Rapporteur remains convinced that these campaigns are essential in order to break the silence and taboos surrounding violence and in order to reach those women, in particular members of the Traveller community, women refugees and those living in rural areas, who do not appear to seek help from crisis services or police, because of ignorance, fear or shame. He also believes that it is particularly important that all women have the right to access all information, including information regarding abortion in an easier manner, and he feels that women members of marginalized groups do not have the same degree of acccess as women from other socio-economic groups.

78. The Special Rapporteur welcomes the positive measures taken by the Government of Ireland to promote and guarantee the right to freedom of opinion and expression of refugees and minorities. He also welcomes the guidelines adopted by the National Union of Journalists when dealing with race relations subjects. However, he notes that additional efforts should be undertaken in order to make Irish journalists sensitive to the needs of refugees.

79. Finally, the Special Rapporteur considers that in general the Irish experience in the field of freedom of opinion and expression could be of value for countries in the process of profound economic and social transition, and that it would be useful if Ireland could build up constructive cooperation with these countries.

IV. RECOMMENDATIONS

80. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

81. The Special Rapporteur encourages the Government of Ireland to consider ratifying the International Convention against All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to fully incorporate or reflect in the domestic legislation the international human rights treaties already ratified.

82. The Special Rapporteur welcomes the future establishment of a Human Rights Commission and wishes to assert that in order for this institution to work in an independent and effective manner it should be guaranteed adequate human and financial resources.

83. The Special Rapporteur recommends that journalists should not be compelled to reveal their sources except in the most limited and clearly defined circumstances in order not to compromise the media's access to information and its ability to communicate important information to the public.

84. The Special Rapporteur encourages the preparation of a new Defamation Bill. He is of the view that the onus of proof of all elements should be on those claiming to have been defamed rather than on the defendant and where the truth is an issue, the burden of proof should lie with the plaintiff. Furthermore, sanctions for defamation should not be so large as to exert a chilling effect on the freedom of opinion and expression and the right to seek, receive and impart information. A range of remedies should also be available, including apology and/or correction. The Special Rapporteur reminds that restrictions on the right to freedom of expression must be limited only to those permissible under article 19 of the International Covenant on Civil and Political Rights.

85. In this regard, the Special Rapporteur also recommends the establishment of an independent press ombudsman, whose functions would be to receive and adjudicate upon complaints against newspapers. The press ombudsman should be granted immunity from action by way of statutory privilege in respect of statements made in the course of his or her duties.

86. Furthermore, the Special Rapporteur urges the Government of Ireland to consider amending Section 31 of the Broadcasting Authority Act, in line with the concerns expressed in 1993 by the United Nations Human Rights Committee. He wishes to reiterate the fact that legislation must exclude the possibility of State authorities influencing the programmes in such a way that would damage the balance, free expression and impartiality of information.

87. The Special Rapporteur urges the Government to consider reviewing or even repealing the laws concerning the censorship of publication and of films and videos. In this regard, he agrees with the 1993 recommendation of the Human Rights Committee "that steps should be taken to repeal strict laws on censorship and ensure judicial review of decisions taken by the Censorship on Publications Board". The Special Rapporteur also recommends that the Censorship of Publications Board operate in public and make its decisions open to public scrutiny.

88. The Special Rapporteur welcomes the introduction of the Freedom of Information Act, 1997, and the work done until now by the Information Commissioner. He also invites the Government of Ireland to consider expanding the scope of the Act, for instance, by including the police force, and to continue its support to the Office of the Information Commissioner with human and financial resources in order to guarantee its independence and effectiveness.

89. With regard to new information technologies, in particular Internet, the Special Rapporteur notes with appreciation the approach of non-intervention of the State. He wishes to encourage the Information Society Commission to continue looking into the issue of social inclusion in order to set up strategies to improve the access of marginalized groups to new information technologies.

90. The Special Rapporteur recommends the adoption and implementation of the Equal Status Bill, 1999, in order to provide for temporary special measures to overcome systemic and indirect discrimination against women and members of the Traveller community. He suggests awareness-raising and educational measures to redress cultural stereotypes for marginalized groups. In particular the Special Rapporteur would encourage the Government and the NGO community to use the media to improve the image of the Travellers and refugees in Ireland.

Notes

[1] The Court of Criminal Appeal in In re O'Kelly (1974) stated that it was acceptable that journalists normally considered themselves under an obligation not to disclose confidential sources of information, but said that it remained the courts' functions to decide whether a witness should be required to answer a specific question.

[2] Contempt of Court Act 1981, Section 10: "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interest of justice or national security or for the prevention of disorder or crime."

[3] Goodwin v. the United Kingdom (16/1994/463/544), judgement adopted on 22 February 1996.

[4] Convention for the Protection of Human Rights and Fundamental Freedoms, article 10: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

[5] Coughlan v. RTÉ (1998).

[6] CCPR/C/79/Add.21, paragraph 21, 3 August 1993.

[7] Section 7 (2) of the Censorship of Films (Amendment) Act, 1992: "... unfit for general exhibition in public by reason of its being indecent, obscene or blasphemous or because the exhibition thereof in public would tend to inculcate principles contrary to public morality or would be otherwise subversive of public morality".

[8] De Rossa v. Independent Newspapers (1999). Also, the European Court for Human Rights decided in Tolstoy Miloslavsky v. the United Kingdom (8/1994/455/536), whose judgement was adopted on 23 June 1995, that "... having regard to the size of the award in the applicant's case in conjunction with the lack of adequate and effective safeguards at the relevant time against a disproportionately large award, the Court finds that there has been a violation of the applicant's rights under Article 10 (art. 10) of the Convention".

[9] Corway v. Independent Newspapers (1999).

[10] Article 40.3.2: "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen".

[11] Section 31 of the Broadcasting Authority Act, 1960 on Directions by Ministers: "The Minister may direct the Authority in writing to refrain from broadcasting any particular matter or matter of any particular class, and the Authority shall comply with the direction ...".

[12] Purcell v. Ireland (1991).

[13] CCPR/C/79/Add.21, paragraph 15, 3 August 1993.

[14] DPP v. Independent Newspapers (1985).

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

Mr. John O'Donoghue, Minister for Justice, Equality and Law Reform; Ms. Sile de Valera, Minister for Arts, Heritage, Gaeltacht and the Islands, Mr. Michael Mc Dowell, Attorney-General, Ms. Liz O'Donnell, Minister of State with special responsibility for Overseas Development Assistance and Human Rights, Department of Foreign Affairs, Ms. Justice Susan Denham, Judge of the Supreme Court, Mr. Eoin Ryan, Member of Parliament, Chairperson of the Justice, Equality and Women's Rights Committee; Ms. Monica Barnes, Member of Parliament, Vice-chairperson of the Justice, Equality and Women's Rights Committee, Mr. Jim Higgins, Member of Parliament, Justice, Equality and Women's Rights Committee; Mr. John Rowan, Head of Human Rights Unit, Department of Foreign Affairs; Mr. Fergal Mythen, First Secretary, Human Rights Unit, Department of Foreign Affairs; Mr. John Haskins, Project Development Division, Department of Justice, Equality and Law Reform; Ms. Audrey Conlon, Deputy Film Censor, Film Censor's Office; Mr. Pat Whelan, Director of the Office of the Information Commissioner, Mr. Mike Neary, Director of Information Society Commission, Ms. Brenda Boylan, Information Society Commission, Mr. Arthur F. Plunkett, Commissioner, Law Reform Commission, Prof. David Glynmorgan, Director of Research, Law Reform Commission, Mr. James Ridge, Chairman of Censorship of Publications Board; Mr. Conor Maguire, Chairperson of the Independent Radio and Television Commission, Ms. Celene Craig, Secretary of the Independent Radio and Television Commission.

Professionals of the media

Mr. Bob Collins, Director-General of Radio Telefís Eireann; Mr. Ronan Brady, Cathaoirleach of the Irish Executive Council of the National Union of Journalists (NUJ), Mr. Tony Jones, Senior Sub-editor, daily Irish Independent; Mr. Ronan Quinlan, Editor, Irish Journalist; Mr. Seamus Dooley, Irish organizer of the NUJ; Mr. Paul Gillespie, Foreign Editor, The Irish Times.

Academics

Ms. Marie McGonagle, Lecturer in Law, University of Galway; Dr. Diarmuid Rossa Phelan, Lecturer in Law, Trinity College; Ms. Maeve McDonagh, Lecturer in Law, University College Cork; Mr. John O'Dowd, Lecturer in Law, University College Dublin.

Non-governmental organizations

Dr. Valerie Bresnihan, Chairperson of the Irish Penal Reform Trust Ltd.; Sr. Brigid Reynolds, Director of Justice Office, Conference of Religious of Ireland; Fr. Sean Healy, Conference of Religious of Ireland; Ms. Olive Braiden, Director of the Dublin Rape Crisis Centre; Mr. Christopher Robson, Gay and Lesbian Equality Network; Women's Committee, Irish Council for Civil Liberties; Mr. Martin Collins, Pavee Point Travellers' Centre; Ms. Maria Flemming, Calypso Production.

Writers

Mr. Tim Pat Coogan.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 1999/36

Addendum

Visit to the United Kingdom of Great Britain and Northern Ireland

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Introduction

1. This report has been prepared pursuant to resolution 1999/36 of the Commission on Human Rights. It presents and analyses information received by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, during his visit to the United Kingdom of Great Britain and Northern Ireland from 24 to 29 October 1999, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By letters dated 3 and 18 June 1999 addressed to the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to that country. On 22 June 1999, the Government of the United Kingdom of Great Britain and Northern Ireland (hereafter referred to as the United Kingdom) granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation in discharging his mandate extended to him by the Government of the United Kingdom.

4. He would also like to express his appreciation to the Director of the United Nations Information Centre in London and his staff, who helped make this visit successful.

5. The first two days of the visit were spent in London and the remaining days in Belfast. During his mission, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with representatives of non-governmental organizations active in the field of human rights, academics, media professionals, members of civil society and other persons of interest to his mandate.

6. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to the United Kingdom.

7. The purpose of this report is to examine the state of freedom of opinion and expression in the United Kingdom by raising particular issues and debates relating to this right. Particular attention will also be given to the situation in Northern Ireland.

I. BACKGROUND AND CONTEXT

8. In the past two years, the United Kingdom has accomplished major constitutional and policy changes setting Northern Ireland on a steady path towards a much desired peace process. The climate for such political changes was conditional on the creation of cross-community partnerships, from the grass-root level to the highest echelon of political power. In particular, under the Good Friday Agreement, new institutions were created that underscored the need for human rights to be at the centre of the process leading to the establishment of a Northern Ireland Human Rights Commission. The Good Friday Agreement, accepted by a clear majority on 20 May 1998, provided for the creation of three interconnected bodies: a Northern Ireland Assembly, a North-South Ministerial Council and a Council of Isles. The Agreement also reiterated the parties' commitment to mutual respect and to safeguarding the civil rights and

religious liberties of everyone in the community. This new political willingness was reflected in the promotion of a bill of rights, addressing the need for support and services to the victims of violence and the rights of ex-prisoners by facilitating their reintegration into society. A newly born cross-party government has made disarmament and devolution of power a real opportunity to end the violence that has beset Northern Ireland for the past 30 years.

9. The United Kingdom is also in the middle of certain constitutional changes, with the recent adoption of the Human Rights Act on 9 November 1998. The incorporation of the European Convention on Human Rights in British law gave a fundamental imprint to the new political arrangements and constitutional changes in the United Kingdom.

10. As far as freedom of opinion and expression is concerned, the printed and broadcasting media have always flourished in the United Kingdom, being free to review critically government action on many sensitive political issues, as well as spearheading important debates within civil society. The plethora of printed press, as well as free-to-air, satellite and regional broadcast channels, seems to prevent any monopoly of information by providing a wide range of methods of receiving and imparting information. The United Kingdom has free and vibrant media, in both the press and broadcast sectors. At the same time, a number of concerns with regard to several issues relating to freedom of opinion and expression deserve particular attention.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

11. In this section the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in the United Kingdom in general and Northern Ireland in particular.

1. International obligations

12. The United Kingdom is a member of the United Nations and is, thus, bound to respect the rights and guarantees set out in the Universal Declaration of Human Rights, article 19 of which enshrines the right to freedom of opinion and expression.

13. The United Kingdom has accepted a wide range of international obligations in the field of human rights. It is a party to six international instruments: the Convention on the Rights of Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights - but not its two optional protocols (the second was signed by the Government but not ratified).

14. With regard to regional human rights instruments, the United Kingdom has incorporated the European Convention for the Protection of Human Rights and Fundamental Freedoms in domestic law and is a party to the European Convention for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment. Any individual within the jurisdiction of the United Kingdom may exercise the right to petition the European Court of Human Rights.

2. National legislation

(a) Legal framework

15. Since the United Kingdom has no written constitution, but a series of principles and conventions, there is no formal protection of certain values such as the right to freedom of opinion and expression. Several important statutes do exist, such as the Magna Carta (1215) and the Bill of Rights (1698), which, in the eyes of the law, lay down a strong broad-based fundament of freedom that cannot easily be shaken off. Some of these statutes, however, are susceptible to amendment by Parliament at any time.

(b) The law on the press and other mass media

16. The Broadcasting Act 1996 provides for an expansion of broadcasting outlets for both television and radio. It sets out a new regulatory framework to allow the development of digital terrestrial broadcasting, which will increase the number of channels available and give further opportunities for local and community broadcasting.

17. The regulation of the television business in the United Kingdom is carried out by the Independent Television Commission (ITC). Among its powers, derived from the Broadcasting Acts of 1990 and 1996, ITC issues licences that allow commercial television companies to broadcast in and from the United Kingdom - whether the services are received by conventional aerials, cable or satellite, or are delivered by digital means. The Commission also has a duty to ensure fair and effective competition in the provision of broadcasting services, to ensure that a wide range of television services is available throughout the country and finally to investigate complaints and to publish its findings. However, ITC is not responsible for creating programmes or scheduling them and does not regulate BBC1, BBC2 or S4C (the Welsh fourth channel), although any commercial services provided by these broadcasters must be licensed by ITC.

18. Established in 1991, the Press Complaints Commission (PCC) is an independent organization which makes sure that the Code of Practice is followed by British newspapers and magazines. The Code of Practice, adopted on 16 November 1997, is based on self-regulation. The Commission aims at striking a just balance between protecting the public's right to know and safeguarding the rights of private individuals. The Commission is composed of 16 members: the majority of them are independent, while the remaining members are senior editors from the newspaper and magazine field. PCC deals with issues such as inaccuracy, safeguarding the welfare of children, privacy, avoiding the identification of victims of sexual assault, discrimination and protecting the confidentiality of sources. Legal and contractual matters, as well as advertising, and the taste and decency of what is published, are issues outside its remit. PCC does not provide financial compensation for complainants. It tries instead to find an amicable agreement between the parties involved or, in other cases, provides critical adjudications in the resolution of complaints. PCC receives about 3,000 complaints per year, the majority of which relate to accuracy in reporting and intrusion into privacy.

19. The Obscenity Publications Act 1959 prohibits the publication of obscene material, defined as material which, when taken as a whole, has a tendency to "deprave and corrupt" those who see and/or hear it.

20. The British Board of Film Classification (BBFC), an independent body, is responsible for granting classifications to films and videos. Without classification, films cannot be distributed. The role of BBFC is to ensure that no film or video breaks the law, and it is entitled to refuse classification on the grounds that a film or video may be in breach of the law. Its rulings are effected by local government bodies which grant cinema licences.

21. The Government prepared a freedom of information bill in May 1999 to replace the current non-statutory Code of Practice on Access to Government Information. At the time of the finalization of the present report, the bill was being presented to Parliament.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

22. The Human Rights Act 1998, enacted on 9 November 1998, incorporates in British law most of the provisions of the European Convention on Human Rights, ratified by the United Kingdom in 1951. Yet its integration into British legislation does not affect the validity, continuing operation or enforcement of any incompatible primary or subordinate legislation. From 2 October 2000, citizens of the United Kingdom who feel they are victims of an unlawful act, will be able to take cases involving provisions of the European Convention to British courts for resolution. The rights in question are the standard civil and political rights, including the right to free speech as set out in article 10 of the European Convention.

23. The Official Secrets Act 1989 creates four absolutely protected categories of information: information the Government considers damaging for defence; information entrusted in confidence to other States or international organizations; information concerning the activities of the security and intelligence services; and information relating to international relations. A lifelong duty of confidentiality is imposed upon Crown servants, who include members of the intelligence and security services. According to section 10 of the Act, a person guilty of an offence under the Act shall be convicted to imprisonment of up to a maximum of two years or to a fine, or both.

24. The Defamation Act 1996 stipulates that a person may be exonerated of responsibility for publication if he/she shows that he/she was not the author, editor or publisher of the statement complained of. The Defamation Act also introduces a new procedure to enable defamation claims to be dealt with more rapidly. When the judge decides that either the claimant or the defence has no realistic prospect of success he may give judgement accordingly.

25. Section 10 of the Contempt of Court Act 1981 stipulates that the court can require a person to disclose the source of the information contained in a publication for which he is responsible, if this is in the interests of justice or national security, or for the prevention of disorder or crime. Under section 11, the court has power to postpone or ban the publication of information which, in its view, might hinder the course of justice.

26. The Police and Criminal Evidence Act of 1984 contains provisions that compel journalists to give evidence in cases where the police can prove it is necessary to their investigation.

27. Emergency laws have been in force in Northern Ireland since the partition of Ireland in 1921. Despite the fact that the Good Friday Agreement envisaged the removal of emergency powers, the Government moved to strengthen existing emergency laws in the aftermath of the Omagh car bombing in August 1998. It updated the Northern Ireland (Emergency Provisions) Act of 1991 (EPA) and the Prevention of Terrorism (Temporary Provisions) Act 1989 with the Northern Ireland (Emergency Provisions) Act 1998 and the Criminal Justice (Terrorism and Conspiracy) Act 1998. Under section 18 of the Prevention of Terrorism Act 1989, a person is guilty of an offence if he has information about acts of terrorism that he knows might be of material assistance and he fails to disclose that information. The punishment can be a fine or imprisonment up to five years or both.

3. The establishment of new institutions in Northern Ireland

28. The initiatives envisaged under the Good Friday Agreement to enhance the promotion and protection of human rights were put in place through the creation of various institutions.

29. On 1 March 1999, the Secretary of State for Northern Ireland established the Northern Ireland Human Rights Commission, which is empowered to review laws and practice relating to human rights and to conduct research and educational activities to promote human rights awareness. The Northern Ireland Human Rights Commission has been entrusted with drafting a bill of rights for Northern Ireland to protect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland. This institution is also empowered to conduct investigations into reported human rights abuses, but this function does not include the power to compel oral or documentary evidence. Furthermore, the Commission has a specific duty to have a formal link with the human rights commission which is in the process of being established in the Republic of Ireland.

30. The Independent Commission on Policing for Northern Ireland was established in June 1998 to recommend reforms to ensure fair, impartial and accountable policing. In September 1999, the Policing Commission, chaired by Christopher Patten, released its report, which called for a human rights based approach to police reform.

31. The Northern Ireland Act also made provision for a single Equality Commission to replace the Fair Employment Commission, the Equal Opportunities Commission for Northern Ireland, the Commission for Racial Equality and the Northern Ireland Disability Council. A key aspect of the work of this Commission will be to support the new statutory duty to promote equality of opportunity.

32. The Public Processions (Northern Ireland) Act 1998 established the Parades Commission, a six-member body appointed by the Secretary of State for Northern Ireland and designed to facilitate mediation of contentious parades. This Commission has, inter-alia, the responsibility to reach conclusions in relation to disputed parades and to determine the routes that contentious

parades should take The Chief Constable has the right to appeal any decision made by the Commission to the Secretary of State, and the police retain the ability to intervene in any public procession on public order grounds while a parade is assembling or proceeding

33 The Police (Northern Ireland) Act 1998 provides for a Police Ombudsperson to replace the independent Commission for Police Complaints Recently appointed, on 11 October 1999, the Police Ombudsperson designate, Mrs Nuala O'Loan, will supervise police investigations of complaints filed against the police in Northern Ireland, or referred to the Commission by the Royal Ulster Constabulary (RUC) Chief Constable, the Police Authority, or the Secretary of State for Northern Ireland The Ombudsperson automatically supervises cases involving death or serious injury, and can direct the Chief Constable to bring charges against police officers

B Principal observations and concerns

1 The legal restrictions on freedom of expression

34 Concerns have been expressed to the Special Rapporteur regarding the use of certain provisions of emergency legislation and of ordinary law which can impinge on the exercise of the right to freedom of opinion and expression The adoption of new legislative measures is the subject of a serious debate in the country

(a) Restrictions directly related to the conflict in Northern Ireland

35 The Special Rapporteur notes that legal restriction regarding freedom of expression in the United Kingdom reached its peak with the 1988 broadcasting ban It was imposed under section 29 of the Broadcasting Act 1981 and under the charter of the British Broadcasting Corporation (BBC) and was directed at broadcast interviews with members or supporters of 11 organizations, including Sinn Fein Thus, between 1988 and 1994, there was official censorship in the United Kingdom, also causing self-censorship among journalists, which reduced knowledge and understanding of the conflict in Northern Ireland

36 In addition, the emergency legislation applying in the United Kingdom, including Northern Ireland, was reportedly used to intimidate journalists This was the case of the Prevention of Terrorism Act (PTA), introduced in 1974, which contains certain provisions, particularly section 18, which make it an offence not to pass information to the police about any future act of terrorism or about people involved in terrorism without a reasonable excuse There have been many allegations that PTA powers of arrest and detention were routinely used to harass and intimidate journalists rather than to prevent or investigate acts of terrorism In fact, a very small percentage of those held under the Act were subsequently convicted of offences under the Act It was reported to the Special Rapporteur that Ben Hamilton, at the time a journalist with television Channel 4, had been arrested at his home on 29 September 1992 by Scotland Yard officers after having been involved in the preparation of the programme "The Committee" Transmitted in October 1991, this programme dealt with collusion in the Irish conflict and in particular with the case of Brian Nelson, a military informer who was in police custody in 1991 Thirty days after the transmission, it was alleged that the police arrived at the premises of Channel 4 to hand over production orders granted under schedule 7 of the Prevention of Terrorism Act Since Channel 4 refused to hand over any information requested which would

reveal anonymous sources who were interviewed in the programme "The Committee", Channel 4 was charged with contempt of court and sentenced to pay a fine of £75,000. In November 1992, charges were reportedly dropped against Ben Hamilton just before his second bail hearing, because of insufficient evidence.

37. The Special Rapporteur was informed that the Prevention of Terrorism Act, updated several times until 1989, is still being implemented. It was recently used against the journalist Ed Maloney, the Northern Ireland Editor of the Sunday Tribune, who was required by a court order under paragraph 3 of schedule 7 of the Prevention of Terrorism Act 1989 to hand over his notes of an interview held in 1990 with a police informer (see para.52 below).

38. Nevertheless, the Special Rapporteur agrees that the situation in relation to reporting in Northern Ireland has improved markedly as a result of the peace process. The most obvious sign was the lifting of the broadcasting ban in 1994. The atmosphere in television has become freer and the use of intimidation by successive Governments to prevent the airing of views critical of British policy in Northern Ireland has stopped. In particular, there has been a less hostile approach to interviewing representatives of Sinn Fein and for the first time since 1974 interviews with members of the Irish Republican Army (IRA) were broadcast on British television.

39. However, even if the broadcasting institutions in Northern Ireland and in Britain have reoriented their coverage of Northern Ireland as a result of the progress of the peace process, they still find it difficult to deal with republican representatives and views. In particular, the Special Rapporteur was told that there has been very little public debate or evidence of internal debate on how the broadcasters might facilitate peace by changing both their reporting guidelines and practice and their recruitment procedures. In particular, a number of criticisms were addressed to the BBC, in particular that it has been overly reliant on governmental statements and briefings in the peace process. Their coverage of the issue of marching in Northern Ireland was reported to be sometimes biased in favour of the Orange Order (the main loyalist marching order) against the residents of the Catholic neighbourhoods.

40. A significant case has been brought to the attention of the Special Rapporteur which highlights the difficulties in reporting the transition to peace in Northern Ireland. The Special Rapporteur has been aware of a complaint by Coiste na n-Iarchimi (Ex-Prisoners' Group) about the refusal of BBC Northern Ireland to broadcast interviews with three members of the Committee who are former prisoners released under the terms of the Good Friday Agreement. The three individuals, Ms. Rosie McCorley, Ms. Geraldine Ferrity and Mr. Joe Doherty, were apparently interviewed in the context of a public event launched by this group, created to assist ex-prisoners in their reintegration into society. In fact, none of the interviews were broadcast by BBC Television nor Radio Ulster as scheduled.

41. In response to this allegation, the BBC made reference to its guidelines, which provide that there should always be referral upwards if ex-prisoners are being interviewed and that the victims concerned should be contacted before the interview is broadcast. BBC stated that since one of the interviewees had been convicted of murder and the journalists had had no time to contact the family, BBC had decided not to broadcast the interviews.

42. The Ex-Prisoners' Group informed the Special Rapporteur that it considered the BBC attitude to be discriminatory against ex-prisoners' groups in Northern Ireland, as well as a manifestation of indirect self-censorship. It also criticized the fact that BBC invoked the section on criminals of its guidelines[1] as a basis for its refusal to broadcast the interviews with the ex-prisoners, creating a confusion between political prisoners and ordinary criminals.

43. The Special Rapporteur agrees that, in such a context, BBC was right to take some precautions and that the rights of the victims should be taken into consideration. However, he also agrees with the ex-prisoners' Group that this attitude does not favour the reintegration of ex-prisoners and reconciliation in Northern Ireland. Consequently, he would request BBC to review its guidelines in this particular regard, taking into account the changing political situation in Northern Ireland, and the Good Friday Agreement, which clearly indicates the difference between political prisoners and ordinary criminals.

(b) Restrictions with regard to the confidentiality of sources

44. The Special Rapporteur considers the protection of journalists' confidential sources indispensable for maintaining a free flow of information to journalists and therefore safeguarding the public's right to know. Section 10 of the Contempt of Court Act 1981 provides some protection to writers who do not wish to divulge confidential sources: "no court may require a person to disclose the source of information contained in the publication unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime". This issue is also reflected in clause 6 of the Broadcasting Standards Commission Codes of Guidance, which states: "all reasonable steps should be taken to ensure that guarantees given to contributors, whether as to the content, confidentiality or anonymity, are honoured". However, the Prevention of Terrorism Act allows the police to seize any material which is likely to help a terrorist investigation. The Act also makes it an offence to make any disclosure which is likely to prejudice the police investigation. The Special Rapporteur was informed that, in practice, the courts have interpreted this provision in a restrictive sense, despite the judgement by the European Court of Human Rights in the 1996 case on protection of sources Goodwin v. the United Kingdom.[2] In that case, William Goodwin, a trainee journalist on The Engineer magazine, was prosecuted for refusing to comply with a court order to reveal the source of confidential information so that a corporation could identify a disloyal employee. The European Court held that the standard applied by the British courts was inappropriate and found the United Kingdom in breach of its obligation to respect freedom of expression.

45. During his mission, the Special Rapporteur noted with concern that the issue of protection of journalistic sources has arisen again, particularly with the recent establishment of a tribunal to inquire into the events of "Bloody Sunday", a dramatic event in 1972 in which 13 civilians, who were taking part in an illegal but peaceful demonstration, were killed by the British military in Northern Ireland. This new inquiry, chaired by Lord Saville, was established in January 1998 by the Prime Minister, Tony Blair, on the basis of new evidence. The findings of Lord Widgery's previous inquiry soon after the events, which exonerated the soldiers, were plagued by allegations that they were politically influenced.

46. According to information transmitted to the Special Rapporteur, this new inquiry marks a crisis for investigative journalism in the United Kingdom, since BBC, Channel 4 TV, UTV and The Daily Telegraph newspaper were summoned to hand over to the tribunal all material, including the names of the sources, used for stories on Bloody Sunday. All refused to do so for reasons of confidentiality and have made applications to have the summons withdrawn. They are reportedly now facing contempt of court charges. In particular, information was provided to the Special Rapporteur regarding the three following journalists.

47. Alex Thompson, of Channel 4 News, contributed to a series of programmes on Bloody Sunday which were broadcast in 1998 and became part of the evidence that led to the establishment of the new inquiry. Today, Mr. Thompson is threatened with contempt of court and risks a heavy fine and even imprisonment if he does not give the tribunal the identities of the soldiers who were interviewed in the programme.

48. Documentary maker Peter Taylor, of BBC, is also being pursued over "Remember Bloody Sunday", a programme broadcast on 28 January 1992. Mr. Taylor was asked to reveal his sources and to hand over his notes, which might allow the identification of the military, republican and other sources who assisted him in the strictest confidence in the preparation of the programme. He is also threatened with contempt of court.

49. On 20 May 1999, Toby Harnden, Irish correspondent for The Daily Telegraph, published two articles about Bloody Sunday on the basis of interviews with two members of the Northern Ireland security forces who took part in the events. Mr. Harnden destroyed his notes in order to protect the anonymity of the soldiers, who had agreed to be interviewed on the strict understanding that the journalist would never disclose their identities. He was later summoned to disclose the identities of the soldiers to the Bloody Sunday Tribunal and has so far refused to do so.

50. The Special Rapporteur must admit that in such a difficult context, two issues are competing: the first is the extent to which the identity of the sources of information is necessary to the inquiry in order to find out the truth; the second is the value for the public to be informed concerning allegations of misconduct by agents of the State. However, the Special Rapporteur considers that if media organizations are ordered to hand over confidential information serious damage would be done to public interest journalism in the United Kingdom. As provided by the European Convention on Human Rights, a journalist should not be used as a source for investigating authorities to obtain evidence from. In addition, undertakings of confidentiality have to be absolute, since otherwise the information would never have reached the public domain. It should also not be forgotten that the safety of journalists and their sources could also be compromised if the identity of sources were to be revealed. Consequently, in order to respect journalists' duty to protect source confidentiality, it is the view of the Special Rapporteur that the legal requirement that journalists hand over requested material should be dropped.

51. The Special Rapporteur would like to raise another case which he considers to be very significant in the context of protection of sources.

52. Ed Moloney, the Northern Ireland editor of the Sunday Tribune, received a court order on 2 September 1999 asking him to hand over his notes from a 1990 interview with

William Stovie, a police informer and member of the loyalist Ulster Defence Association (UDA), who was arrested and charged in June 1999 in connection with the murder of Belfast lawyer Patrick Finucane in 1989. This court order was made under paragraph 3 of schedule 7 to the Prevention of Terrorism (Temporary Provisions) Act 1989. William Stobie had given Ed Moloney confidential information in 1990 but had asked him not to reveal it unless something happened to him. After William Stobie's arrest, Ed Moloney published an article on 27 June 1999 detailing some of the allegations Mr. Stobie made in 1990 that the Northern Ireland police had been informed that Finucane's murder was being planned. The journalist, who was facing a heavy fine and a prison sentence of between six months and five years, refused to comply with the court order on the grounds that revealing sources was contrary to journalistic ethics and could also endanger him personally. The journalist decided to file for judicial review of the judge's ruling.

53. On 27 October 1999, the Lord Chief Justice of Northern Ireland quashed the judge's decision given on 2 September 1999 ordering Mr. Moloney to hand over his notes. On the day the judge of the High Court handed down his judgment in the case, the Special Rapporteur was present in Belfast. A member of his delegation attended the court session and heard the delivery of the judgment.

54. The Special Rapporteur welcomes this important decision since he considers that forcing a journalist to hand over confidential interview notes can have an intimidatory effect on investigative journalism. Indeed, such practices can result in deterring journalists from gathering information about human rights abuses committed by government forces and can silence people willing to provide information about human rights violations, because of fear of exposure.

55. However the Special Rapporteur notes that the law, the Prevention of Terrorism Act, is still in force, in particular schedule 7, which requires people to hand over information which the police want because it may assist a terrorist investigation. In addition, the decision handed down by the High Court of Justice is based on the fact that it was not sufficiently established that the notes on the interview of Mr. Moloney were of substantial value to the investigation. The principle of confidentiality of the sources was not mentioned as such in the judgement. The Special Rapporteur also notes with concern that schedule 7 is contained in the new terrorism bill which has recently been introduced in the House of Commons.

(c) The use of secrecy

56. The Special Rapporteur's attention was drawn to the fact that the Official Secrets Act 1989 is used to stifle legitimate debate and to penalize writers and journalists who refuse to reveal their sources.

57. Under the Official Secrets Act 1989, serving or retired officials face criminal prosecution - which means possible prison sentences and unlimited fines - if they disclose without authority information relating to defence, international relations, security and intelligence, and crime. The Special Rapporteur was informed that the Act does not provide for any form of public interest defence for unauthorized disclosure of information where the existence of crime, abuse of authority or other misconduct are revealed. It is also no defence

that material is already in the public domain. The Act is based on a presumption of secrecy in favour of the Government. Nor does it allow for a defence of previous publication, despite the European Court of Human Rights case, Observer and Guardian v. United Kingdom[3] (the "Spycatcher" case), in which the Court held that it was not legitimate to penalize disclosure once the information was in the public domain.

58. The Official Secrets Act is supplemented by an unofficial system of "D-notices" issued by a committee established in 1912, the Defence, Press and Broadcasting Advisory Committee (D-notice Committee). This committee, which provides advice on national security issues in the form of "D-notices", is run from an office in the Ministry of Defence and is not accountable to the public or to Parliament. Although D-notices have no formal legal force, it is unwise to ignore them as this may lead to more official action, such as prosecutions under the Official Secrets Act. The Special Rapporteur was told that the aim of the committee allegedly is to promote self-censorship by the media in the area of national security, which is defined very broadly. At times its objective appears to be to stifle debate about politically sensitive matters, rather than to protect national security as such.

59. A number of cases in which the Official Secrets Act or D-notices have been applied were brought to the attention of the Special Rapporteur. Two cases in particular which relate to prosecutions under the Act for disclosing information to protect public interest were mentioned.

60. The first case concerns David Shayler, a former employee of the British Intelligence Agency, MI5, who has reportedly been pursued by the British authorities in connection with allegations he made after his employment with MI5 was terminated. In particular, he disclosed "confidential" information to the Mail on Sunday, which published on 24 August 1997 an article on alleged bugging of left-wing politicians, as well as unnecessary and expensive investigation concerning Victoria Brittain, a Guardian journalist, inefficient and outdated bureaucratic methods and an endemic drinking culture within MI5. It is reported that Mr. Shayler left the United Kingdom on 23 August 1997 for France, fearing prosecution and arrest. The Government obtained a short-term injunction against the Mail on Sunday preventing the media from revealing any information about Mr. Shayler's time in MI5. Allegedly, the presiding judge, Mr. Justice Keen, stated that there was no harm to the public interest by the publication of the article, but he granted a short-term injunction since some of the material could potentially have been of use to a hostile power. It appears that Ms. Annie Machon, Mr. Shayler's partner, and three other acquaintances of Mr. Shayler were also arrested but released without charges. Following the submission on 31 July 1998 to the Government by the Mail on Sunday of a story alleging that MI6 funded a Libyan plot to assassinate Colonel Qaddafi which reportedly resulted in the death of civilians, the British authorities sought to have Mr. Shayler extradited from France, but the French court refused, on the basis that the prosecution was politically motivated. On 1 August 1998, Mr. Shayler was arrested by the French Département pour la sécurité du territoire and detained for two months at La Santé prison.

61. The second case mentioned to the Special Rapporteur concerns Tony Geraghty, a writer and former journalist, who was charged under section 5 of the Official Secrets Act in connection with the publication of his book, The Irish War, in 1998. This book includes a description of a surveillance system used by the British authorities in Northern Ireland. Before the book was published, the D-notice Committee requested Mr. Geraghty to hand over his manuscript, which

he refused to do. Despite its allegedly sensitive contents, the Government has taken no action to prevent or limit the publication of the book. However, in December 1998, the Ministry of Defence police visited Mr. Geraghty at his home, confiscating equipment and files while he was held for five hours at Leominster police station. In January and March 1999, he was questioned several times by the police and released on bail. The Special Rapporteur was recently informed that, on 20 December 1999, the Attorney-General asked the Crown Prosecution Service to stop the proceedings and consequently the charges against Mr. Geraghty were dropped. However, Nigel Wylde, a former computer specialist working with the Government and who allegedly provided information that Mr. Geraghty used in his book is still being prosecuted under section 2 of the Official Secrets Act.

(c) New legislative measures

62. New legislative measures are being adopted in the United Kingdom which have a direct impact on the exercise of the right to freedom of opinion and expression. Two bills - the Freedom of Information Bill and the Regulation of Interception and Communication Bill - are currently generating controversy and debate in the country.

(i) Freedom of Information Bill

63. The Government of the United Kingdom drafted the Freedom of Information Bill in May 1999 to replace the current non-statutory Code of Practice on Access to Government Information. This followed the white paper "Your right to know", drafted in the preparation of this legislation, which aimed at allowing widespread public access to official information and documents. The main features of the bill are: (i) a general right of access to information (ii) the duty of public authorities to adopt a scheme for publishing information as a matter of course and (iii) a new office of Information Commissioner and a new information tribunal with wide powers to enforce the Act.

64. The Special Rapporteur views the bill as a positive step towards increasing the flow of information to the public, yet he is critical of its retreat from the white paper "Your right to know". Nevertheless, the Special Rapporteur has taken notice of three significant changes with respect to the Code of Practice: (i) the bill defines "information" and "public authority" broadly to allow greater disclosure of information (ii) the institutional role of the Commissioner in evaluating public authorities' action and reviewing their refusals to disclose information and (iii) the legal responsibility attached to the act of defacing a record to prevent disclosure. The bill is a breakthrough insofar as journalists will now have the opportunity to go directly to the records and check "official" information.

65. However, the Special Rapporteur has noted with concern that the bill has been criticized on the following accounts: (i) there is a broad class of exemptions pertaining to security bodies, investigations, decision making and policy formation, (ii) the jurisdiction of the Commissioner is somewhat restricted, and (iii) the bill contains a weak test for disclosure. In particular, sections 18 to 28 have been brought to the attention of the Special Rapporteur. For instance, section 18 relating to the work of security bodies has been questioned for being too broad, since it also includes information which does not relate to security, strictly speaking. The Special Rapporteur would like to point out that security matters are often of the highest public interest

66. Furthermore, the bill reportedly contains certain categories that should not be treated as class exemptions, such as section 22, which refers to information that would prejudice "the interest of the United Kingdom abroad". Similarly, section 25 exempts information that has been held by public authorities for the purpose of various types of investigations. This exemption should be narrowed to include only material related to criminal process. Section 28 (3) exempts information likely to prejudice the maintenance of collective responsibility of ministers. Again, the Special Rapporteur believes that the bill should not cover all information relating to the development of policy, but only information which would inhibit legitimate policy process.

67. With regard to the power of the Commissioner, some of the exemptions merely require a ministerial certificate for preventing disclosure. The Special Rapporteur believes that the power of the Commissioner should not be restricted by a government veto. He also perceives as a weakness the fact that the bill does not include a public interest test, but considers "public interest" only as one factor among others.

68. Section 14 of the bill, which deals with discretionary disclosures to the public, has been widely questioned. The fact that the public authorities may require the applicant's reason for the request and to know how he/she intends to use the information has been perceived as a liability. Moreover, this provision requires that disclosure of the information would be lawful, implying that the bill is subject to secrecy laws.

69. In conclusion, the Special Rapporteur considers the attitude of the public authorities to the provisions of the bill of great significance. Indeed, public bodies are required under the bill to prepare and provide a reference book indicating their structure and organization, the type of records they hold and the arrangements made to enable access to them. Hence, the Special Rapporteur is particularly concerned about the process of obtaining information. For instance, the imposition of onerous fees can undermine the whole system of access. Yet, the fundamental change that the Special Rapporteur wishes to see implemented is equal status between the authority and the applicant in accessing the information. Also, the Official Secrets Act 1989, which contains a broad definition of official secrets remains in place. Indeed, section 35 of that Act undermines the goal of the Freedom of Information Bill by making it secondary to all other existing laws.

(ii) The Regulation of Interception and Communication Bill

70. The right to freedom of information is closely related to the right to privacy of the person, and more particularly of communication. This explains why the Regulation of Interception and Communication Bill, also known as the Regulation of Investigatory Powers Bill, has initiated a round of serious debates and consultations with particular regard to the implications for the right to freedom of opinion and expression.

71. With this bill, the Government's intention is to update the legislation contained in the Interception of Communication Act 1985 to take account of the new communication technologies, and in this light to provide a statutory framework for authorizing the disclosure of

data held by communications service providers. The 1985 Act dealt with the interception of telephone calls and opening mail. Implementation of the Act was mainly confined to Northern Ireland.

72. The Government, which has argued that interception has and will play a vital role in the fight against serious crime and threats to national security such as terrorism, acknowledges that "interception can take place when information cannot reasonably be acquired by other means". Part III of the bill is subject to controversy since it appears to infringe on the presumption of innocence embodied in article 6 of the European Convention on Human Rights. Reportedly the bill would give the police the power to demand decryption keys from anyone suspected of possessing them, while non-compliance could lead to a two-year jail sentence.

73. Therefore, the Special Rapporteur recommends a narrower definition of the concept of "Internet interception" in order to avoid abuses. He also considers that, if the necessity to review legislation is clear, in the interception of communications a fair balance and proportionality should be maintained, with a view to safeguarding private communications and avoiding unnecessary restrictions on the use of encryption on the Internet.

(e) Other types of legal restrictions

Defamation law

74. In the United Kingdom, it seems that there is a large number of plaintiffs seeking to sue for damages for libel and that this is due to the relative ease of obtaining large damage awards under English defamation law. A key problem reported to the Special Rapporteur concerning English defamation law is strict application of a truth standard, with the onus on the defendant. Thus, if the defendants cannot prove that their statements were true, they will generally be liable for damages, regardless of the status of the plaintiff, for example as politician or public figure, or of the public interest in having the material published. It is increasingly being recognized that in cases involving politicians and public figures, journalists should benefit from a defence showing that he or she acted professionally by seeking to verify the accuracy of the material, especially when publication was in the public interest. This should apply even if the material ultimately proved to be false or the journalist could not prove it to be true. Indeed, the Special Rapporteur considers that this would provide a better balance between the importance of protecting reputations and the need to ensure a free flow of information to the public.

75. Nevertheless, the Special Rapporteur was informed that the 1996 Defamation Act puts on a clear statutory basis the common law defence of innocent dissemination, providing that people such as printers and distributors who have taken part in the publication of defamatory material will not be liable where they did not know, and could not reasonably have been expected to know, that the publication was defamatory. This defence will also apply to people such as service providers for the Internet.

76. A judgement given by the House of Lords during the Special Rapporteur's visit was also brought to his attention. In Reynolds v. The Sunday Times,[4] the plaintiff, a former Taoisach (Prime Minister) of Ireland, began proceedings against the publishers of an article in The Sunday Times relating to the political crisis in Ireland in 1994 that culminated in the

resignation of Mr. Reynolds as Taoisach and the collapse of his government coalition. In this decision, Lord Nicholls said that the court should have particular regard to the importance of freedom of expression and that it should be slow to conclude that a publication, especially in the field of political discussion, was not in the public interest. Any doubts should be resolved in favour of publication.

77. The Special Rapporteur was also informed that the obscenity laws applicable in England and Wales are still very restrictive and applied in an arbitrary fashion. This is mainly due to the definition of obscenity by the Obscene Publications Act 1959, which is reported to be subjective and results in arbitrary, discriminatory and inconsistent application by police and other officials. Two main problems have been pointed out to the Special Rapporteur: the first is linked to the fact that the Act does provide for a defence of publication in the public good, in the interests of science, literature, art or learning, or other objects of general concern. One recent case is the seizure in October 1997 of the book Mapplethorpe from the library of the University of Central England. Mapplethorpe's work is reportedly widely regarded as some of the most important photography of this century. Although the Crown Prosecution Service eventually decided not to prosecute the university, students were denied access to the book for nearly a year.

78. Secondly, the Special Rapporteur was told that the British Board of Film Classification (BBFC) and the Independent Television Commission (ITC) apply excessively restrictive interpretations of obscenity. Films and commercial videos must be classified by the BBFC before they may be shown in the United Kingdom and the ITC is responsible for ensuring that licensed television broadcasters respect their licence conditions, including standards of good taste and decency. Film producers are also sometimes willing to cut material so as to obtain a less restrictive BBFC classification. It has been reported to the Special Rapporteur that the standards applied by the two bodies have failed to keep up with attitudes and values currently prevailing among the British public. Indeed, some materials were not granted the classification certificate, although they were available in most European countries as well as Canada, Australia and the United States.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) Freedom of expression and assembly

79. In the United Kingdom the law provides for the right of peaceful assembly, but that right is limited routinely where it would impose a cost on public convenience. In Northern Ireland, the law which will apply in those circumstances is the Public Order (Northern Ireland) Order 1987 and the Public Processions Act 1998.

80. A major issue in Northern Ireland which was brought to the Special Rapporteur's attention is the annual "marching season" in Northern Ireland. Both nationalists and unionists[5] hold parades and marches, but the vast majority is sponsored by loyalist orders. Each year, from Easter until September, more than 2,600 traditional Protestant marches are organized by the Orange Order (the main loyalist marching order), some of which proceed through areas where

they are not welcome by the Catholic residents. Approximately 40 of these marches have routes that take them through Catholic neighbourhoods, giving rise to tensions and occasional violence.

81. The Special Rapporteur had the opportunity to meet with representatives of the Orange Order and of the resident's group in Portadown, one of the most affected areas, to have a clear understanding of this complex situation. The Orange Order views its processions as traditional marches giving expression to its members' religious and cultural heritage, and maintains that it is merely exercising its right to free assembly. The nationalist residents view these parades as a threat and a way to incite hatred since they celebrate Protestant "triumphs" over Catholics in historical battles. They also believe that the police presence accompanying the marches disproportionately disrupts the life of nationalist communities, by the prohibition of access to their homes, jobs and essentials such as food and medical treatment.

82. In this regard, the policing of these contentious marches, in particular the use of plastic bullets, raises serious concerns. During recent marching seasons, specifically from 1995 until 1998, violence has often characterized the marches, in particular those involving attempts by the Orange Order to parade in the mainly nationalist Garvaghy Road. This has led to disturbances across Northern Ireland. In July 1998, violence flared up following the decision by the Parades Commission to re-route a Protestant march to Dumcree church in Portadown away from the Garvaghy Road. A large number of people, mainly loyalists, allegedly suffered head and upper body injuries after being shot with plastic bullets by the security force. These injuries suggested that the force's internal guidelines requiring that shots be aimed below the waist had not been consistently followed. In 1998, three young brothers were burned alive when a petrol bomb hit their houses in what police said was a sectarian attack apparently linked to the Dumcree dispute. In this regard, it is relevant to mention that the lawyer Rosemary Nelson, who was murdered in March 1999 by a loyalist paramilitary group, was representing residents of the predominantly Catholic Garvaghy Road neighbourhood. She had reportedly been subjected to systematic intimidation and threats by the security forces in the years preceding her death.

83. The Special Rapporteur is aware of the fact that two very fundamental rights are in competition in this context: the right to freedom of expression and assembly and the right to privacy and to live in peace. Both have to be exercised in an equitable way so that one is not superior to the other. The Special Rapporteur also noted that the two communities suffer from this state of affairs and that reconciliation in Northern Ireland will depend upon the peaceful resolution of this type of conflict.

84. He is also convinced that the responsibility of the State authorities in Northern Ireland is to maintain the rule of law, thus assuring both communities equal protection of their rights. International law and jurisprudence provide some criteria in order to strike a balance; they are the importance of the protected right, the need in a democratic society to promote tolerance and broadmindedness, the weight and significance of the interests that the State is seeking to protect by interfering with the protected right, and the notion that the State must act proportionately. A fair and impartial policing of the demonstrations has also to be guaranteed.

85. Furthermore, the Special Rapporteur considers that the establishment of the Parades Commission which takes the responsibility from the Royal Ulster Constabulary to deal with parades, is an important step towards a peaceful solution to this difficult issue. He thus supports

the efforts of the Parades Commission members insofar as their decisions are fair and discussed with the interested parties. In particular, the Special Rapporteur wishes to welcome the concrete work undertaken by the Commission to keep the marches peaceful and the drafting of statutory documents relating to processions and parades (code of conduct, procedural rules and guidelines). The Special Rapporteur was, however, informed that, the Commission has been subject to direct interference from the authorities and that its decisions are criticized by both Catholics and Protestants. The Orange Order is particularly opposed to the decisions of the Commission and to its very existence. During a meeting with the Special Rapporteur, members of the Orange Order asserted that to prevent such marches is a denial of their culture and tradition, and therefore they disagree with the Commission.

86. Fear has also been expressed about the independence of commissioners who may be either more sympathetic to the Orange Order or to the residents. The Special Rapporteur considers that the procedure for selection of the members of the commission has to be as transparent as possible and take into consideration the merit, fairness and the balanced views of the candidates. Also, the decisions the Commission takes have to be widely disseminated in the media in order to explain to the population the reasons for the interdiction of a march or for a change of route.

87. Nevertheless, the Special Rapporteur was informed that the marching season in the summer of 1999 was quieter than in previous years and that the Commission's rulings have increasingly been complied with.

(b) The right to express cultural diversities

88. The Special Rapporteur had the opportunity to meet with the organizers of one of the largest community festivals in Western Europe, the West Belfast Festival. Located in a very nationalist area, this festival aims to express the Irish identity through the organization of cultural events (theatre, concerts, film festivals, exhibitions etc.). One controversial event which was brought to the attention of the Special Rapporteur is the Saint Patrick's Day Parade which was organized for the first time in March 1998, celebrating with great success Irish culture in the centre of Belfast. The festival is having funding problems due to the reportedly politically biased allocation of funds by the local council in Belfast. In particular, a play criticizing the police had its funding cut in 1999, as did the parade on St. Patrick's Day.

89. Another issue touches upon the use of languages other than English. There are about 25,000 Irish language speakers in Belfast. There has been a long campaign by activists to promote the use of the Irish language, which has in the past been met with hostility or indifference by the State. This campaign has been met with differing levels of official resistance. In particular, the campaign has focused on the use of the Irish language in schools. In addition, other individuals now campaign on behalf of the Ulster Scots language. Generally the Irish language campaign is seen as nationalist, while the Ulster Scots campaign is considered as unionist. Furthermore, there is a genuine disagreement amongst linguists about whether Ulster Scots is a language or a dialect. Nevertheless, it has a growing importance in terms of the unionist community's cultural identity. The Special Rapporteur considers that steps should be taken to improve the situation with regard to language, in particular by increasing the use of these languages in the media of Northern Ireland.

(c) Particular issues

90. The Special Rapporteur would like to raise three issues that deserve particular attention.

(i) Discrimination against parliamentarians

91. Mr. Martin McGuinness, member of Sinn Fein elected to Westminster in the general election of 1 May 1997, has applied to the European Court of Human Rights in the belief that his rights under articles 9, 10, 13 and 14 of the European Convention on Human Rights and article 3 of the first Protocol thereto were breached by the penalties contained in the Parliamentary Oath Act 1866 for failing to take the prescribed oath to the British monarchy. This followed the restrictions imposed by the Speaker of the House of Commons on 14 May 1997 which barred him and Mr. Gerry Adams from taking their seats in Parliament and using the normal facilities afforded to Members of Parliament. Mr. McGuinness's objection to the oath was based, in his own words, on Sinn Fein's party policy, which views such legislation as the Parliamentary Oath Act as anti-Catholic bias which is still a keystone of the British constitution. His application was ruled inadmissible by the European Court on 8 June 1999. However, there is currently speculation that the British Government intends to reserve the speaker's ruling on this issue. In addition, the House of Commons is currently debating a government bill which would allow members of the Irish Parliament to sit in the Commons, thereby endorsing dual membership.

(ii) The situation of women

92. Compared to the socio-economic situation in Great Britain, Northern Ireland suffers serious inequalities, which also target women. These inequalities are apparent between men and women, but also between women themselves on grounds of their religious/political backgrounds, their ethnicity, their age and other such status. Concern was also expressed about domestic violence, which in Northern Ireland constitutes nearly half of reported violent crime against women.

93. As regards the participation of women in politics, the Special Rapporteur noted that women have as yet made only modest headway, particularly at the level of decision-making bodies. According to the sources, whereas the proportion of female councillors is 28 per cent in England, it is only 14 per cent in Northern Ireland. There are no Northern Irish female members of the European Parliament, and no female Members of Parliament in Westminster. In the Belfast-based Assembly of 108 members, 14 members are women (12.9 per cent).

94. There is now machinery to address women's rights through the Minister for Women in the Cabinet, supported by the women's unit which, since June 1998, has been located within the Cabinet Office at the heart of the Government. The Good Friday Agreement also determined that equality should be mainstreamed in Northern Ireland with the help of the newly appointed Equality Commission. Also, a vibrant civil society has developed, in which women play an important role.

95. The Abortion Act 1976 does not extend to Northern Ireland, where, with limited exceptions, abortion continues to be illegal. According to the Office of National Statistics, at least 40 women leave Northern Ireland every week to avail themselves of the Abortion Act in Britain.

96. The Special Rapporteur learned with concern that in this matter women are being prevented, in certain cases, from gaining access to information. He was told that centres providing advice and counselling to women are attacked by anti-abortion groups, sometimes leading to their closure. The Family Planning Association, as well as the Brook Clinic, which in fact is not an abortion referral service, are regularly the target of campaigns of intimidation and harassment by Precious Life, an anti-abortion organization based in the United States. These attacks include picketing the homes of clinic workers, sending letters to their neighbours, denouncing them as murderers and shouting abuse to staff and clients when they enter the clinics.

97. The Special Rapporteur considers these attacks to be a violation of the rights of women to obtain information, insofar as young women, particularly, are prevented from using the clinics. Women should be able to request advice in a confidential place without fear of intimidation and abuse. In this regard, action should be taken by the Government to safeguard the right to information of women. An open debate and a consultation should also take place concerning the extension of the 1967 Abortion Act to Northern Ireland, which remains today a taboo subject.

(iii) The right to information of victims and of the public

98. Various sources expressed concern to the Special Rapporteur about the Government's failure to investigate independently and fully serious allegations of human rights violations in Northern Ireland and to bring the perpetrators to justice. In particular, the Special Rapporteur was made aware of the fact that the results of internal investigations are not made public. This is of particular concern to those persons whose relatives were killed by the army or the police. Because very few prosecutions are brought, it has become impossible for the families of the deceased to become aware of the full circumstances of any disputed killing. The desire to know the truth about these incidents now extends beyond just the relatives and immediate communities of those involved. These cases are indeed emblematic of a need for a more formal mechanism to deal with the past.

99. Some inquiries remain a total secret, such as those focusing on collusion between members of the security forces and loyalist paramilitary groups. The reports of senior police officers John Stalker, Colin Sampson and John Stevens have never been published. The lawyer Patrick Finucane, who specialized in human rights work, was killed in 1989 in the presence of his wife and his three children. Evidence of possible official collusion in Mr. Finucane's assassination surfaced in 1992, after which the Director of Public Prosecution commissioned an inquiry into Mr. Finucane's death. The report of the inquiry was never made public, although it was rumoured that it contained recommendations to prosecute four members of the security forces for collusion with loyalist paramilitaries. In this regard, reference should be made to the report of Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, who called for an independent judicial inquiry to investigate the case of Patrick Finucane's murder.[6]

100. This issue was certainly taken into account by the Belfast Agreement and the British Government appointed Mr. Adam Ingram as Minister of Victims and Sir Kenneth Bloomfield as Victim's Commissioner. The latter was designated to initiate a consultation with the victims and issued a report in May 1998. Some of the victims of State violence with whom the Special Rapporteur met clearly expressed their disappointment about the work of these mechanisms, particularly the Victim's Commissioner. They continue to claim the right to know the full circumstances of their relatives' death.

101. Furthermore, the report of the Independent Commission on Policing for Northern Ireland, recently published, failed to address the issue of past abuses by the police and did not provide adequate investigative mechanisms to deal with allegations of such abuses. This concern was expressed to the Special Rapporteur, although it was also recognized that there were progressive elements in the report concerning the achievement of a more accountable policing service.

102. It was suggested that a truth commission should be established, similar to the one existing in South Africa. Allowing the victims to tell in a public forum what has happened to them and to their relatives would encourage reconciliation. This would also allow disclosure of information to the victims and the public in general, as well as reparation for the victims or their relatives. These principles are indeed fundamental requirements for both the individual and the community as part of the healing and conflict resolution process.

III. CONCLUDING OBSERVATIONS

103. The Special Rapporteur welcomes the commitment of the Government of the United Kingdom to democracy, the rule of law and human rights. He strongly encourages the ongoing peace process in Northern Ireland, which is fundamental for the promotion and protection of human rights, including the right to freedom of opinion and expression.

104. The Special Rapporteur considers the enactment of the Human Rights Act 1998 to be an important step towards the concrete implementation of human rights, as well as for their legal protection. He also welcomes the establishment of new institutions in Northern Ireland, especially the Human Rights Commission, which should create an environment favourable to the development of human rights in general and the right to freedom of opinion and expression in particular. The Special Rapporteur considers that a culture of human rights is indispensable for a peaceful and durable resolution of the conflict in Northern Ireland and that the Human Rights Commission has a fundamental role to play in that regard.

105. The Special Rapporteur can assert that freedom of opinion and expression is widely visible in the United Kingdom. Since the lifting of the broadcasting ban, the media have been operating in a free and independent environment. Along the same lines, the Special Rapporteur observes that freedom of opinion and expression clearly finds the protection it warrants and any attempt at restriction is closely scrutinized by all sectors of society. The controversy around the Freedom of Information Bill, in particular, shows that healthy debates do take place.

106. The Special Rapporteur welcomes the new Freedom of Information Bill as a way to redress significant imbalances in the current system of disclosing information. However, despite the fact that the Special Rapporteur is aware of the difficulty in trying to balance three competing

interests - a right to information, a right to privacy and a right to confidentiality - the bill does not appear to grant considerable access to information. The controversy associated with this initiative among professionals in the media should convince the Government to re-examine it.

107. The Special Rapporteur notes with concern that freedom of opinion and expression has been hindered to some extent by the use and implementation of certain laws which restrict this right. Emergency powers have eroded public confidence, not only in the criminal justice system but also in the free operation of the investigative press. The fact that anti-terrorism legislation has not, and shows no sign of, being repealed is a matter of concern, as is the Government's decision to introduce permanent anti-terrorist legislation in the form of the terrorism bill.

108. The Special Rapporteur is concerned at the use of secrecy in the United Kingdom, which leads to restrictions in the daily work of the press, but also hinders full access to information relating to the public interest. In particular, the Special Rapporteur considers the use of the Official Secrets Act to prosecute journalists and writers, as well as the existence of the D-notice Committee, to be incompatible with media freedom. The Special Rapporteur is of the view that a democracy can only operate if the citizens and their elected representatives are fully informed. With the exception of a few types of documents, it is desirable to make government documents public to allow citizens to know that public funds are being utilized correctly. Thus the Special Rapporteur notes that in order for journalists to be able to carry out their role as "watchdogs" in a democratic society, it is indispensable that they have access, granted on an equitable and impartial basis, to information held by public authorities.

109. Furthermore, the Special Rapporteur notes with concern the attacks against the internationally recognized principle of the confidentiality of journalists' sources. He considers that protection of journalistic sources is one of the basic conditions for press freedom and is at the heart of freedom of expression.

110. As far as the rights to freedom of expression and assembly are concerned, the Special Rapporteur wishes to recall that they are core human rights and essential in a democracy. These rights have, however, to be exercised without prejudice to the rights and liberties of others. Therefore, State interference with these rights should be exceptional and only to protect specific interests (i.e. protection of the rights of others, public safety, national security, public order). Thus, where the exercise of these rights infringes upon the rights and freedoms of others, only limitations proportionate to the protection of the rights of others can be imposed. The police are under the double duty to protect the rights of those assembled and to guarantee that the rights of others are not violated in the process. In this context, the Special Rapporteur wishes to reiterate his support for the creation of the Parades Commission and appreciates the difficult task it has to carry out. Patience and understanding from the population are requested in order for the Commission to discharge its tasks in an impartial and effective manner.

111. Along the same lines, the Special Rapporteur welcomes the government initiative of appointing a Police Ombudsperson, who should be able to contribute to raising public confidence in the complaints procedure system. He wishes to encourage the work of this new institution and to call for the cooperation of other parties.

112. The Special Rapporteur remains concerned over some additional issues he has identified which have a direct impact on the exercise of the right to freedom of opinion and expression in the United Kingdom. He wishes to emphasize especially the importance of the right to information for victims. The Special Rapporteur considers that the truth, through disclosure of information to the families of victims, is an essential part of the healing process. A climate of openness is important in building sustainable confidence in the peace process in Northern Ireland. In this regard, he wishes to refer to a recommendation made by the Human Rights Committee in 1995 that "specific efforts be made to enhance in Northern Ireland confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for the independent investigation of complaints".

IV. RECOMMENDATIONS

113. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchange of views which took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

(a) The Special Rapporteur strongly encourages the Government of the United Kingdom to take all necessary steps to accede to the Optional Protocol to the International Covenant on Civil and Political Rights in order to allow individuals to submit complaints to the United Nations Human Rights Committee.

(b) In accordance with the recommendations of the Committee against Torture in 1996 and of the Human Rights Committee in 1998 asking for the dismantling of emergency laws, the Special Rapporteur urges the Government to repeal all provisions which are not in conformity with international treaties and standards, in particular emergency laws like the Prevention of Terrorism Act which have a chilling effect on the right to freedom of opinion and expression.

(c) The Government is strongly encouraged to ensure that any restrictions on the right to freedom of opinion and expression remain the exception, bearing in mind that such restrictions must be limited to those permissible under article 19 of the International Covenant on Civil and Political Rights.

(d) The Special Rapporteur urges the Government to ensure that future legislation and its implementation are in compliance with article 19 and other relevant international standards. In the case of the Freedom of Information Bill, the Special Rapporteur would request the Government to review the text of the bill with regard to two main aspects: the scope of class exceptions should be limited, and the Information Commissioner should have sufficient power to ensure effective access to information held by public authorities.

(e) The Government is further urged to amend certain domestic laws which are currently too restrictive as to the exercise of the right to freedom of opinion and expression:

(i) Section 10 of the Contempt of Court Act 1981 should be reviewed to make clear that mandatory source disclosure may be ordered only in the most pressing circumstances - where there is no other means of obtaining the information and where the public interest in receiving it clearly overrides the importance of protecting source confidentiality;

(ii) The Official Secrets Act should be amended so as to allow for penalties for disclosing information only where disclosure would pose a serious risk of substantial and immediate harm to a legitimate national security or public interest; it should also be a defence if the information is already in the public sphere or if the public interest in disclosure outweighs the secrecy interest;

(iii) The obscenity law should be amended to include a concrete requirement of harm before material may be prohibited;

(iv) The defamation law should be amended to allow for a defence of reasonable publication in the public interest. In addition the offence of criminal libel should be abolished.

(f) The Special Rapporteur welcomes the establishment of the Northern Ireland Human Rights Commission and the Police Ombudsperson, but would call upon the Government to provide them with the adequate human and financial resources to carry out their mandate effectively and with the independence required.

(g) As regards Northern Ireland and the media, the Special Rapporteur considers that further efforts should be made to improve the media tone and attitude towards Northern Ireland. Consequently, it should be envisaged that the BBC and other broadcasters re-evaluate their guidelines in order to adapt them to changes going on in Northern Ireland and in order to contribute to a general movement in favour of peace.

(h) The Special Rapporteur considers the building of a human rights culture to be of extreme importance in resolving the conflict in Northern Ireland. The support of the Northern Ireland Human Rights Commission, as well as of international organizations like UNESCO and OHCHR, is required. In addition to the current changes in legislation, a seminar for the training of journalists and debates relating to human rights issues should be encouraged.

(i) The Special Rapporteur calls upon the Government to pay particular attention to the issue of marching and to support the work of the Parades Commission. The balance between Catholics and Protestants in the membership of the Commission, as well as its independence, have to be fully guaranteed. In this regard, the Special Rapporteur would suggest amending the Public Processions (Northern Ireland) Act 1998 in order to ensure the independence of Commission members from Government.

(j) Furthermore, the Government is asked to ensure that the law and practice governing public demonstrations are in compliance with international standards. In this regard, the Special Rapporteur urges the Government to stop the use of excessive force against peaceful demonstrators, in particular the indiscriminate use of life-threatening plastic bullets, as recommended by the Committee against Torture in 1998.

(k) The Special Rapporteur calls upon the Government to disclose information to the victims of the conflict in Northern Ireland to a maximum extent, in order to restore confidence in the police system and to reinforce the peace process. He particularly encourages the Government to make public the findings of the Stalker/Sampson and Stevens inquiries.

(l) Finally, in view of the number of allegations received which he could not consider since they did not fall within his mandate, the Special Rapporteur would like to encourage the Government to consider a visit to Northern Ireland of the Special Rapporteur on religious intolerance. The Special Rapporteur is convinced that such a visit would assist the Government in finding additional ways to promote cooperation and reconciliation between the two communities.

Notes

[1] The BBC Producer's Guidelines were last published in November 1996. They set out the current code of good practice. Section 2 of the Guidelines is entitled "Dealing with criminals".

[2] Goodwin v. the United Kingdom (16/1994/463/544), judgement adopted on 22 February 1996.

[3] 26 November 1991, 14 EHRR 153.

[4] The weekly Law Reports, 12 November 1999.

[5] Nationalists are Catholics and characterized by their will to unite with the Republic of Ireland. Loyalists or unionists are Protestants and wish to remain with the United Kingdom.

[6] See E/CN.4/1998/39/Add.4.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

London

Carolyn Browne, Head, Human Rights Policy Department, Foreign and Commonwealth Office

Carolyn Morrison, Head of International Broadcasting, Broadcasting Policy Division, Department for Culture, Media and Sport

Mark McGann, Head of Press and Music Branch, Media Division, Department For Culture, Media and Sport

Christopher Dawes, Head of General Broadcasting Policy, Broadcasting Policy Division, Department for Culture, Media and Sport

Nicholas Hodgson, Head of International and Common Law Service

Lee Hughes, Head of Freedom of Information Team

Richard Jenkins, Policy Adviser, Freedom of Information, Constitutional & Community, Home Office

Northern Ireland

George Howarth, Minister with responsibility for human rights, Northern Ireland

Ken Lindsay, Head, Police Division for the Northern Ireland Office

Stephen Webb, Security and International Division

David McIlroy, Rights and European Division

Mrs. Nuala O'Loan, Police Ombudsman (Designate) for Northern Ireland

Frank Guckian and David Hewitt, Commission members, Parades Commission

Media professionals

Professor Robert Pinker and Janet Anderson, Press Complaints Commission

Alex Thomson, Channel 4 News, Chief Correspondent

John Ware, BBC

Peter Taylor, BBC

Maurice Frankel, Director, The Campaign for Freedom of Information

Granville Williams, Campaign for Press and Broadcasting Freedom

Tony Geraghty, NUJ/Society of Authors

John Foster, General Secretary, National Union of Journalists (NUJ)

Tim Gopsill, NUJ

Kevin Cooper, NUJ member, Photoline Photographic Agency

Sean McPhilemy, television broadcaster and author

Ed Maloney, Northern Editor, Sunday Tribune

David McKittrick, The Independent

Academics

Kevin Boyle, Human Rights Centre, University of Essex

Dr K S Venkateswaran, University of Ulster

Non-governmental organizations

Andrea Puddeplatt, Executive Director of Article 19, and his colleagues

Jane Winter, British Irish Rights Watch

Halya Gowan, Amnesty International

Elizabeth Smith, Commonwealth Broadcasting Association

Kevin d'Arcy, Association of European Journalists, International Press Institute

Mel James, International Policy Executive (Human Rights), The Law Society

Relatives for Justice

Others

Brice Dickson and Professor Hadden, Northern Ireland Human Rights Commission

Michael Flannagan, lawyer

Bro. David Jones, Press Officer, Orange Order, Portadown District

Garvaghy Road Residents Association

Laurence McKeown, Coiste na n-Iarchimi Republican Ex-prisoners' Group

Mary Crawford, Brook Advisory Centre

Caitriona Ruane, West Belfast Festival Committee

Nelson McConsland/Lee Reynolds, Ulster Scots Heritage Council

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